

AGENDA
CITY COUNCIL
Tuesday, September 12, 2023
9:00 AM

The regular meeting of the City Council will be held on September 12, 2023 at 9:00 AM in the City
Council Chambers
455 N. Main Street, Wichita, KS 67202.

OPENING OF REGULAR MEETING

Call to Order

Invocation and Pledge of Allegiance

Approve the minutes of regular meeting of September 5, 2023.

AWARDS AND PROCLAMATIONS

Proclamations:

Wichita Eagle Day
Constitution Week
Hispanic Heritage Month

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a “first-come, first-served” basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city clerk prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda.

Rules of decorum as provided in this code will be observed.

II. CONSENT AGENDA ITEMS 1 THROUGH 14

NOTICE: Items listed under the “Consent Agendas” will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the “Consent Agendas” and considered separately (The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see “ATTACHMENT 1 – CONSENT AGENDA ITEMS” for a listing of all Consent Agenda Item

COUNCIL BUSINESS

III. BOARD OF BIDS AND CONTRACTS

1. Board of Bids and Contracts dated September 11, 2023.

RECOMMENDED ACTION: Receive and file report, approve the contracts and authorize the necessary signatures.

IV. PETITIONS FOR PUBLIC IMPROVEMENTS - NONE

V. UNFINISHED COUNCIL BUSINESS

VI. NEW COUNCIL BUSINESS

1. Grant Acceptance – The National Trust for Historic Preservation – Conserving Black Modernism (District I)

RECOMMENDED ACTION: Accept the Conserving Black Modernism grant and authorize the necessary signatures.

[Agenda Report No. VI-1](#)

[City of Wichita Grant Agreement.pdf](#)

2. Designation of Common Consumption Area Authorizing Possession and Consumption of Alcoholic Liquor – Public Hearing and Resolution (District VI)

RECOMMENDED ACTION: Close the public hearing and adopt the resolution authorizing the designation of a Common Consumption Area and allowing the consumption of alcoholic liquor on the date, at the location and during the times set forth therein and authorize the necessary signatures.

[Agenda Report No. VI-2](#)

[UPDATED 8.26 Map of Proposed Common Consumption Area.pdf](#)

[Resolution No. 23-373](#)

3. Downtown Restroom and Hydration Station Improvements (Districts I and VI)

RECOMMENDED ACTION: Approve the budget, adopt the bonding resolution, and authorize the necessary signatures.

[Agenda Report No. VI-3](#)

[Resolution No. 23-374](#)

4. Design Concept for Douglas Avenue from Seneca Street to Meridian Avenue (Districts IV and VI)

RECOMMENDED ACTION: Approve the design concept.
[Agenda Report No. VI-4](#)

5. 2024 Cultural Funding Allocation Recommendations

RECOMMENDED ACTION: Approve the funding allocations recommended for arts and cultural organizations by the Cultural Funding Committee and authorize the necessary signatures.
[Agenda Report No. VI-5](#)

6. Creation of Chapter 3.40 of the Code of the City of Wichita Relating to Short Term Rentals

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.
[Agenda Report No. VI-6](#)
[Ordinance 52-265](#)

7. An Ordinance Creating Chapter 5.08 of The Code of The City of Wichita, Kansas, Pertaining to Nuisance Parties

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.
[Agenda Report No. VI-7](#)
[Ordinance 52-264](#)

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

VII. NON-CONSENT PLANNING AGENDA

1. DER2023-00006 – Short Term Rental Unified Zoning Code Changes

RECOMMENDED ACTION: Suspend City Council Policy #9 and allow public comment on this item, adopt the recommended amendments to the Unified Zoning Code, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading

(requires 4 of 7 votes).
[Agenda Report No. VII-1](#)
[STR - Timeline of Events.docx](#)
[STR - Existing Con Regs Enforcement and Other Comm.docx](#)
[STR - UZC Changes.docx](#)
[Memo - STR UZC Notification & Protest Examples_2023_04_07 v2.pdf](#)
[STR - Public Input v 2023-08-24.docx](#)
[2023-04-13 MAPC Final Minutes - STR Excerpt.pdf](#)
[2023-05-11 MAPC FINAL Minutes - STR Excerpt.pdf](#)
[Ordinance 52-266](#)

2. PUD2023-00007 – Zone Change Request in the City from SF-5 Single-Family Residential District to PUD Planned Unit Development to Permit Development of Athletic Fields Associated with the Northwest YMCA; Generally Located on the South Side of West 21st Street North, Within One-Half Mile West of North 135th Street West. (District V)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 4 of 7 votes).

Alternatives:

- 1) Override the MAPC, adopt alternate findings, and approve the zone change request subject to DAB recommended changes to the PUD General Provisions (requires 5 of 7 votes);
- 2) Override the MAPC, adopt alternate findings, and deny the zone change request (requires 5 of 7 votes); or
- 3) Return the case to MAPC for additional consideration (requires 4 of 7 votes).

[Agenda Report No. VII-2](#)
[PUD2023-00007 WCC Attachments.docx](#)
[PUD2023-00007 MAPC Minutes Excerpt.docx](#)
[PUD2023-00007 CC Interoffice Memorandum.pdf](#)
[Ordinance 52-259](#)

3. ZON2023-00043 - Zone Change in the City from B Multi-Family District to LC Limited Commercial District to Allow Commercial Uses, Generally Located on the Northeast Corner of May Avenue and Dodge Avenue (1222 West May Avenue). (District IV)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 6 of 7 votes).

Alternatives:

- 1) Deny the zone change (requires 5 of 7 votes); or

2) Return the case to MAPC for additional consideration (requires 4 of 7 votes)

[Agenda Report No. VII-3](#)

[ZON2023-00043 WCC Attachements.docx](#)

[ZON2023-00043 MAPC Meeting Minutes.docx](#)

[2023-08-07 DAB 4 ZON2023-00043.pdf](#)

[Ordinance 52-260](#)

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. Toni Lewis, a Housing Member, is also seated with the City Council.

VIII. NON-CONSENT HOUSING AGENDA - NONE

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. NON-CONSENT AIRPORT AGENDA - NONE

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

XI. COUNCIL MEMBER APPOINTMENTS AND COMMENTS

Adjournment

ATTACHMENT 1 - CONSENT AGENDA ITEMS 1 THROUGH 14

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Applications for Licenses for Cereal Malt Beverages:

a. Applications for Licenses to Retail Cereal Malt Beverages

RECOMMENDED ACTION: Approve licenses subject to staff review and approval
[CMB's for September 12, 2023.docx](#)

2. Preliminary Estimates:

a. Preliminary Estimates

RECOMMENDED ACTION: Receive and file.
[PEsforCC_09-12-23.pdf](#)

3. Agreements/Contracts:

- a. Funding, Agreements and Change Order Limit Adjustment for West Street, Harry to Pawnee (District IV)

RECOMMENDED ACTION: Approve the agreements and the change order limit adjustment and the amending resolution.

[Agenda Report No. II-3a](#)
[BHE Agreement CC.pdf](#)
[KDOT Agreement CC.pdf](#)
[WATCO Agreement CC.pdf](#)
[Resolution No. 23-375](#)
[Resolution No. 23-376 85433 CO Limit](#)

4. Design Services Agreements:

- a. Design Agreement for Lionsgate Addition (District IV)

RECOMMENDED ACTION: Approve the design agreement and authorize the necessary signatures.

[Agenda Report No. II-4a](#)
[Design Agreement.pdf](#)

- b. Supplemental Design Agreement No. 1 for Improvements for Colt Meadows Addition Phase 1 (District IV)

RECOMMENDED ACTION: Approve Supplemental Design Agreement No. 1 and authorize the necessary signatures.

[Agenda Report No. II-4b](#)
[SDA No. 1.pdf](#)

Uncategorized Items:

5. Community Event with Alcohol Consumption – ICT Bloktoberfest (District I)

RECOMMENDED ACTION: Adopt the resolution to allow alcohol consumption upon sidewalks and public streets within the parameters outlined in the Community Event Application during the ICT Bloktoberfest event occurring October 13-14, 2023, and authorize the necessary signatures.

[Agenda Report No. II-5](#)
[Bloktoberfest 2023 Friday Site Map FA DIGITAL.pdf](#)
[Resolution No. 23-377](#)

6. Funding for West Street, Interstate 235 to MacArthur Road (District IV)

RECOMMENDED ACTION: Approve the revised budget, adopt the amending resolution, and authorize the necessary signatures.

[Agenda Report No. II-6](#)

[Resolution No. 23-378](#)

7. Transit Center and Parking Garages Security Guard Novation Contract

RECOMMENDED ACTION: Approve the novation contract with St. Moritz Group for continued security guard services at the Transit Center and Parking Garages and authorize the necessary signatures.

[Agenda Report No. II-7](#)

[23200069 Novation contract for agenda revised.pdf](#)

[23200070 Novation contract for agenda.pdf](#)

8. Payment for Settlement of Claim

RECOMMENDED ACTION: Authorize payment of \$262,500 as full settlement of all possible claims arising out of the event, which is the subject of this claim and adopt the bonding resolution, and authorize the necessary signatures.

[Agenda Report No. II-8](#)

[Resolution No. 23-379](#)

9. First Reading of the Bond Ordinance to Issue Multifamily Housing Revenue Bonds (Steele Shadybrook Estates) (District I)

RECOMMENDED ACTION: Place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not to exceed \$9,000,000 for Steele Shadybrook Estates, LLC and authorize the necessary signatures.

[Agenda Report No. II-9](#)

[Ordinance 52-261](#)

10. First Reading of the Bond Ordinance to Issue Industrial Revenue Bonds (McAsey Investments, LLC/Wichita Machine Products) (District IV)

RECOMMENDED ACTION: Place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not to exceed \$2,500,000 for McAsey Investments, LLC/Wichita Machine Products and authorize the necessary signatures.

[Agenda Report No. II-10](#)

[Ordinance 52-262](#)

11. Second Reading Ordinances:

Second Reading Ordinances (First read September 5, 2023)

RECOMMENDED ACTION: Adopt the ordinances.

[List of Second Reading Ordinances 09-12-2023.docx](#)

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

12. ZON2023-00042 – Zone Change Request in the City from LC Limited Commercial District to GC General Commercial District to Allow for Future Development, Generally Located on the Southwest Corner of North Amidon Avenue and West 33rd Street North (3357 North Amidon Avenue). (District VI)

RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 4 of 7 votes).

[ZON2023-00042 WCC Supporting Documents.docx](#)

[ZON2023-00042 MAPC Minutes.docx](#)

[2023-08-14 District Advisory Board 6 ZON2023-00042 DAB Memo.pdf](#)
[Ordinance 52-263](#)

[ZON2023-00042 WCC Agenda Report.docx](#)

II. CONSENT HOUSING AGENDA ITEMS - NONE

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion. Toni Lewis, a Housing Member, is also seated with the City Council.

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

13. Federal Aviation Administration - Supplemental Agreement No. 1 - Wichita Dwight D. Eisenhower National Airport

RECOMMENDED ACTION: Approve the supplemental agreement and authorize the

necessary signatures.

[Agenda Report No. II-13](#)

[WAA ATCT Exhibit A.pdf](#)

[DTFASW-09-L-00093_SA - ICT ATCT Final Form 20230915.pdf](#)

14. AirMS, LLC, Use and Lease Agreement - Wichita Dwight D. Eisenhower National Airport

RECOMMENDED ACTION: Approve the agreement and authorize the necessary signatures.

[Agenda Report No. II-14](#)

[AirMS - Exhibit A.pdf](#)

[AirMS Use and Lease Agreement 20230919 Final Form.pdf](#)

**City of Wichita
City Council Meeting
September 12, 2023**

TO: Mayor and City Council

SUBJECT: Grant Acceptance – The National Trust for Historic Preservation – Conserving Black Modernism (District I)

INITIATED BY: Metropolitan Area Planning Department
Department of Park and Recreation

AGENDA: New Business

Recommendation: Accept the Conserving Black Modernism grant and authorize the necessary signatures.

Background: On December 16, 2022, the City of Wichita submitted a Letter of Intent to apply for the National Trust for Historic Preservation’s Conserving Black Modernism grant to restore and preserve the McAfee Pool in the City of Wichita McAdams Park. This was a collaborative effort by the Planning, Public Works & Utilities, and Park & Recreation Departments. Planning provided invaluable expertise and context for the application regarding ongoing historic preservation efforts with area partners.

The Conserving Black Modernism grant program is designed to empower and equip sponsors with funding and technical support to preserve the material heritage, innovation, and legacy of Modern architectural sites designed by Black architects. The McAfee Pool, constructed in 1969 and designed by Wichita architect Charles F. McAfee, is a notable example of Modernist architecture by a Black architect.

On March 9, 2023, the National Trust for Historic Preservation accepted the Letter of Intent and encouraged the City of Wichita to formally apply for the grant. On April 4, 2023, the City Council approved the application as a consent item.

On June 12, 2023, the National Trust for Historic Preservation notified the City of Wichita that it was selected as one of the recipients for the Conserving Black Modernism grant.

Analysis: The funding from the Conserving Black Modernism grant will assist the City of Wichita to undertake projects that accomplish the following:

- A full-scale preservation plan for the McAfee Pool;
- ADA accessibility and repairing windows and doors from a vandalism incident in July 2022; and
- Indirect expenses.

Financial Considerations: The total project funding will be \$150,000 from the National Trust for Historic Preservation. The grant does not require any matching funds.

Legal Considerations: The Law Department has reviewed and approved the grant agreement as to form.

Recommendations/Actions: It is recommended that the City Council accept the Conserving Black Modernism grant and authorize the necessary signatures.

Attachments: Grant agreement



**National Trust *for*
Historic Preservation**
Save the past. Enrich the future.

August 21, 2023

Mr. Timothy Kellams
City of Wichita, KS
455 N. Main Street
Wichita, KS 67202

Re: African American Cultural Heritage Action Fund Grant Agreement

Dear Mr. Kellams:

It is a pleasure to inform you that the City of Wichita's application for an African American Cultural Heritage Action Fund (the "AACHAF") Conserving Black Modernism grant has been approved by the National Trust for Historic Preservation (the "National Trust"). Grants from the AACHAF are designed to advance ongoing preservation activities for historic places representing African American cultural heritage. The National Trust, a privately funded nonprofit organization, protects significant places representing our diverse cultural experience by taking direct action and inspiring broad public support.

By signing this Agreement ("Agreement") and accepting the funds, the City of Wichita (the "Grantee") agrees to abide by the terms and conditions set forth below.

1. Award and Budget. The National Trust approves an award of One Hundred and Fifty Thousand US Dollars (\$150,000) (the "Grant Funds") to the Grantee to fund the organization's Preservation of the Charles McAfee Pool house, Wichita, KS project (the "Project"). The Grant Funds should be used to hire a consultant to complete a comprehensive preservation plan for the Charles McAfee Pool House property. The preservation plan should address accessibility considerations. The portion of funding utilized for the limited capital project should not exceed \$45,000 without prior written approval from National Trust staff. The planning study must be completed prior to beginning the limited capital project. The limited capital project should address life safety issues, accessibility, and/or roofing systems. Additionally, the selected project firm should have demonstrated expertise in working with modernist buildings. Up to 10% of the Grant Funds may be used to cover indirect support or overhead costs. The Grant Funds must be used exclusively for charitable purposes as described in Section 501(c)(3) of the Internal Revenue Code and only in support of the Project. Any changes to either the budget or use of Grant Funds as described in your application or above must be approved in advance in writing by the National Trust. The National Trust may assign a staff liaison to provide technical assistance to the Grantee with the Project.

2. Term. The Project must be completed within **18 months** from the date of the first disbursement of Grant Funds from the National Trust (the "End Date"). Should any problems arise, that would prevent the Grantee from completing the Project by the End

Date, the Grantee must submit a written request for an extension of this Agreement to the National Trust at least ten (10) days prior to the End Date.

3. Approval of Consultant/Contractor. The National Trust approves the Grantee's selection of the consultant(s) or contractor(s) for this Project as stated in the project application. If the Grantee has not yet selected a consultant or contractor, the Grantee agrees to obtain the National Trust's prior written approval for any consultant or contractor paid with Grant Funds. Please submit the name of the selected consultant or contractor along with their CV or website via email to the National Trust as soon as selected. If the Grantee wishes to change consultants or contractors, the National Trust's prior written approval is required.

4. Competitive Procurement Process. The Grantee agrees that all procurement of goods and services for the Project shall be conducted in a manner that provides maximum open and free competition and consideration of minority and women-owned business enterprises. When a procurement for the Project exceeds \$50,000, the Grantee must seek and obtain at least three (3) competitive bids or quotes. This applies to any procurement greater than \$50,000 that is part of this Project, whether financed through National Trust funds or through the matching funds that make up the rest of the Project's approved budget. The Grantee must also maintain adequate procedures to ensure that the procurement of goods and services, including consultant and contractor services, does not present a conflict of interest.

5. Preservation Work. Any documents or plans for preservation work or capital (construction) work that relate to or result from the Project must conform to the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, as appropriate.

6. Grant Disbursements. Grant Funds will be disbursed as follows:

<u>Date/Phase</u>	<u>Amount</u>
Following receipt by the National Trust of this fully executed Agreement	50% of the Grant Funds
Upon completion of the Project and submission of the final report (as required by Paragraph 7(b))	Remaining Grant Funds

7. Reporting Requirements.

a. Interim Report. The Grantee agrees to submit an interim report when the Project is 50% complete. The interim report must describe the status of the Project and all expenditures made from Grant Funds and must report on the Grantee's compliance with the terms of this Agreement.

b. Final Report. Within thirty (30) days of the End Date, the Grantee agrees to submit to the National Trust a final report and financial accounting on the use of the Grant Funds, as well as any materials or reports created from the Grant.

Submitting Reports. All reports must be submitted online in the same system used to submit the grant application: <http://www.grantinterface.com/Home/Logon?urlkey=nthp>. Extensions for submission of reports may be approved by the National Trust only for extraordinary circumstances beyond the control of the Grantee.

8. License to Use Grant Materials. In accepting this Grant, the Grantee grants to the National Trust a non-exclusive, royalty-free, perpetual, and transferable license to use, and to allow others to use, any and all application materials, reports, documents, photographs, or other materials funded by the Grant (the “Grant Materials”) along with the right to use the Grantee’s name and logo for non-profit, educational, and promotional purposes related to the National Trust and/or AACHAF. The Grantee also agrees to allow the National Trust to take its own photographs or video recordings of the Project. The provisions of this paragraph shall survive termination or expiration of this Agreement and remain in full force and effect.

9. Publicity and Acknowledgement of Grant Support. The National Trust will be making a public announcement of the AACHAF Conserving Black Modernism grants. Prior to the National Trust’s public announcement, the Grantee agrees not to make any announcement or release any information concerning the Grant or any matter relating to this Agreement without the advance written approval of the National Trust. After the National Trust’s public announcement, the National Trust must be listed as a supporter in any printed material and publicity releases and on the Grantee’s website. For the Grantee’s assistance, enclosed is a sample press release format for use in publicizing the Grant. The Grantee shall give appropriate acknowledgement of the National Trust’s support for the Project in all materials resulting from or related to the Grant, such as articles, books, reports, films, radio programs, databases, web resources, convenings, events, and exhibitions, using the following statement:

“With support from Getty, this project was funded by a grant from the African American Cultural Heritage Action Fund of the National Trust for Historic Preservation.”

10. Additional Information; Recordkeeping. The Grantee agrees to provide any other information and documents requested by the National Trust to describe the work on the Project and/or all expenditures of Grant Funds and to demonstrate the Grantee’s compliance with the terms of this Agreement. In addition, the Grantee agrees to permit representatives of the National Trust, with reasonable notice, to inspect the Project. The Grantee agrees to maintain complete books and records of revenues and expenditures relating to the Grant, together with appropriate supporting documentation, for at least four (4) years. The Grantee agrees to make these books and records available for inspection at reasonable times if deemed necessary by the National Trust.

11. Funding Conditions. This Grant is funded through a grant from the Getty Foundation (the “Getty”) to the National Trust. The Grantee agrees to comply with all applicable terms and conditions of the Getty’s award including, but not limited to: (a)

maintaining adequate financial records consistent with generally accepted accounting practices for the period specified above; (b) returning to the National Trust any portion of the Grant Funds, and interest thereon, which are not used for the Project; and (c) allowing the Getty, at its discretion, to publish information regarding this Grant and the Grantee.

As a condition of grant funding, the Grantee and its staff/volunteer representatives and selected consulting firm will be required to attend a Conserving Black Modernism training/convening hosted by the Getty and the AACAHF in Los Angeles, California in March of 2024. The Grantee will receive a stipend of \$2,600 to cover travel expenses for the event. Additional information on this requirement will be provided to the Grantee by early fall of 2023.

12. Representations and Warranties. The Grantee represents and warrants that:

- a.** It is a 501(c)(3) nonprofit corporation in good standing or a public agency.
- b.** If it has previously received financial assistance from the National Trust, all prior grant requirements were satisfied or are current as of the date of this Agreement.
- c.** With respect to the Grant Materials, (i) the Grantee is solely responsible for the creation of the Grant Materials; (ii) the Grant Materials are original and have never been published (except for material subject to copyright for which the Grantee has obtained permission to use); (iii) the Grantee has not previously assigned, pledged, encumbered, or authorized their publication in a manner that conflicts with this Agreement; (iv) the use of the Grant Materials will not infringe upon any copyright, trademark, or other proprietary rights, violate any right of privacy, or contain libelous material; and (v) the Grant Materials contain only information and data that is true and accurate to the best of the Grantee's knowledge, belief, and expertise.
- d.** The representative executing this Agreement has the power and authority to bind the Grantee to the terms of this Agreement and to convey the rights granted to the National Trust.
- e.** The representations and warranties of this paragraph shall survive the termination or expiration of this Agreement and remain in full force and effect.

13. Indemnification. The Grantee shall defend, indemnify, and hold harmless the National Trust and its respective officers, directors, trustees, employees, and agents, from and against any and all claims, liabilities, losses, damages, and expenses (including reasonable attorneys' fees) based upon or arising out of any act, omission, negligence, misconduct, and/or breach of this Agreement by the Grantee, its officers, directors, employees, or agents, while engaged in the performance of this Agreement and/or in carrying out the Project. The provisions of this paragraph shall survive the termination or expiration of this Agreement and remain in full force and effect.

14. Lobbying and Political Activities. No part of the Grant will be used for lobbying activities or to participate in any political campaign in support of or in opposition to any candidate for public office.

15. Equal Opportunity. The Grantee agrees not to discriminate against any employee or applicant for employment because of actual or perceived race, color, national origin, creed, age, gender, marital status, sexual orientation, religion, mental and physical disabilities, sex (including pregnancy), personal appearance, gender identity or expression, family responsibilities, genetic information, matriculation, political affiliation or veteran status.

16. Change in Status. The Grantee shall notify the National Trust immediately of any change in: (a) the Grantee's tax-exempt status or (b) the Grantee's executive staff or key staff responsible for the Project.

17. Requirement to Return Grant Funds. The Grantee agrees to return the Grant Funds if the Grantee: (1) fails to complete the Project as described in the application; (2) fails to complete the Project by the End Date; (3) fails to obtain the National Trust's written approval prior to making a material change to the Project; or (4) fails to submit the final report within thirty (30) days of the End Date. The Grantee agrees to return the Grant Funds to the National Trust no later than thirty (30) days after receipt of notice from the National Trust.

18. Miscellaneous. This Agreement constitutes the entire understanding of the parties with respect to the Grant and cannot be amended without the mutual written agreement of the parties. This Agreement cannot be assigned by the Grantee without the National Trust's prior written approval. This Agreement is made in and will be governed by the laws of the District of Columbia.

Please sign and return this Agreement to the National Trust as soon as possible by uploading the signed document to the Grantee's existing account in the online grants portal: <http://www.grantinterface.com/Home/Logon?urlkey=nthp>.

Please contact actionfundgrants@savingplaces.org for any additional assistance.

Remainder of page intentionally left blank.

We are delighted that your Project has been selected to receive an African American Cultural Heritage Action Fund Conserving Black Modernism grant, and we look forward to continuing to work with you to ensure that our nation's rich heritage is preserved for the benefit and enjoyment of present and future generations.

Sincerely,



Brent Leggs
Executive Director, AACHAF
Senior Vice President
National Trust for Historic Preservation

AGREED AND ACCEPTED BY:

City of Wichita, Kansas

By: _____

Name: _____

Title: _____

Date: _____

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Designation of Common Consumption Area Authorizing Possession and Consumption of Alcoholic Liquor – Public Hearing and Resolution (District VI)

INITIATED BY: Department of Park & Recreation

AGENDA: New Business

Recommendation: Close the public hearing and adopt the resolution authorizing the designation of a Common Consumption Area and allowing the consumption of alcoholic liquor on property not otherwise subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act.

Background: In 2017, the Kansas legislature authorized cities or counties to establish one or more Common Consumption Areas (CCA) by ordinance or resolution, designate the boundaries of any CCA, and prescribe the times during which alcoholic liquor may be consumed. A CCA is defined as “an indoor or outdoor area, clearly marked using a physical barrier or any apparent line of demarcation, not otherwise subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act where the consumption of alcoholic liquor is allowed pursuant to a common consumption area permit.” In January 2018, the City Council created Chapter 4.08 of the Code of the City of Wichita, which allows the establishment of CCAs by resolution within the City.

An application that would establish a CCA and allow alcohol consumption has been submitted by the Old Town Association for the ICT Latinfest community event scheduled for September 16, 2023. In accordance with Subsection 4.08.020 (c) of the Code of the City of Wichita, upon review of the CCA application by City staff, written comments are to be provided and included in the final recommendation to the City Council. Following the staff review, a public hearing is to be scheduled before the City Council and notice of the hearing is to be mailed to all record owners of real property within 200 feet of the proposed CCA.

Following the public hearing the City Council may, by resolution, authorize the possession and consumption of alcoholic liquor in the designated CCA. The CCA will include portions of Old Town bounded by Moore Avenue on the west, Washington Avenue in the east, Douglas Avenue in the south and 3rd Street North on the north. Such designation with alcoholic possession and consumption shall be effective Saturday, September 16, 2023, from 11:00 am – 11:00 pm. Consumption of alcoholic liquor is allowed throughout all portions of the proposed CCA.

Analysis: Section 4.08.030 of the Code of the City of Wichita sets forth the criteria for approval of a proposed CCA, which include providing adequate security; the zoning classification for the proposed CCA is no more restricted than LC (Limited Commercial) and is compatible with such use; the CCA is not located within 300 feet of any residential zoning district, public park, public or parochial school, church, or other place of worship unless a conditional use has been granted; and the distance between the

CCA and any other CCAs in the vicinity is appropriate. The City Council is also asked to consider any staff comments, though there were no staff comments received for this application. Additionally, the City Council shall consider any protests or concerns expressed by the neighborhood, businesses residents or other citizens regarding the proposed CCA.

Applying the criteria from Section 4.08.030 of the Code of the City of Wichita, staff has reviewed the application of the Old Town Association for a CCA for the ICT Latinfest with consumption of alcoholic liquor allowed as set forth above, finds that such criteria has been met and recommends approval of the event permit subject to any public concerns raised at the public hearing.

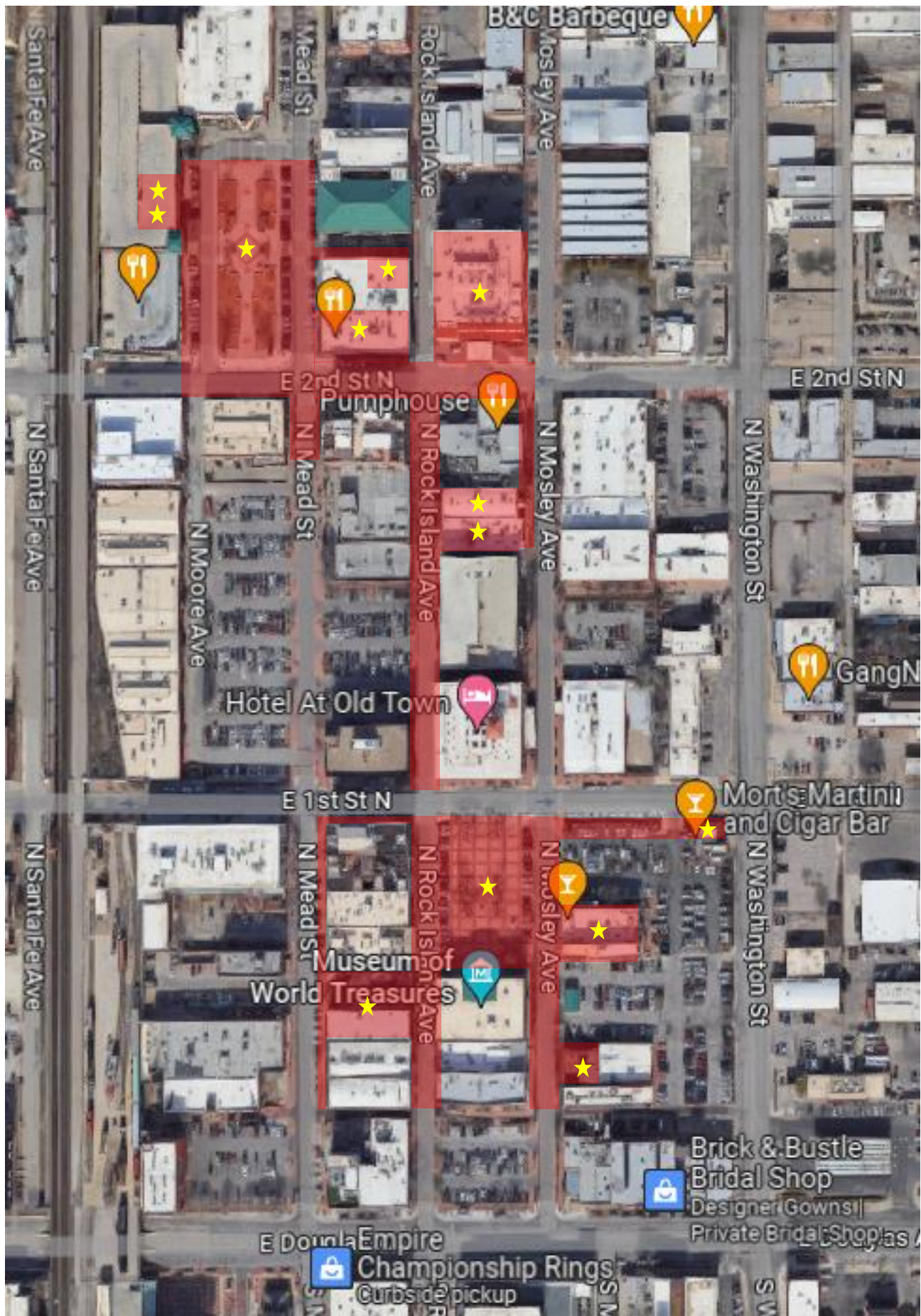
Financial Consideration: There are no financial considerations.

Legal Consideration: The Law Department has prepared the proposed resolution and approved as to form.

Recommendation/Actions: It is recommended that the City Council close the public hearing and adopt the resolution authorizing the designation of a Common Consumption Area and allowing the consumption of alcoholic liquor on the date, at the location and during the times set forth therein and authorize the necessary signatures.

Attachments: Resolution and map of proposed site for CCA.

Map of Proposed Common Consumption Area



RESOLUTION NO. 23-373

A RESOLUTION AUTHORIZING THE DESIGNATION OF A COMMON CONSUMPTION AREA AND ALLOWING THE CONSUMPTION OF ALCOHOLIC LIQUOR ON PROPERTY NOT OTHERWISE SUBJECT TO A LICENSE ISSUED PURSUANT TO THE KANSAS LIQUOR CONTROL ACT OR THE CLUB AND DRINKING ESTABLISHMENT ACT.

WHEREAS, an application has been filed seeking the designation of a Common Consumption Area by the City Council pursuant to Chapter 4.08 of the Code of the City of Wichita and as authorized by K.S.A. 41-2659, and

WHEREAS, the applicant has complied with all requirements to obtain such a designation as set forth in Chapter 4.08 of the Code of the City of Wichita, and

WHEREAS, the designation of a Common Consumption Area is being sought by The Old Town Association in connection with the ICT Latinfest community event scheduled for Saturday, September 16, 2023 from 11:00 am. until 11:00 pm, and for which an application for a permit has been filed, and

WHEREAS, the location of the proposed Common Consumption Area for which the applicant seeks approval is depicted in the attached map and includes the following streets as well as participating establishments adjacent to the street closures:

- Mead Avenue adjacent to the Old Town Square located at 301 Mead Avenue;
- A portion of Mead Avenue from 2nd Street north extending approximately 120 feet to the south;
- 2nd Street North from Moore Avenue to Mosley Avenue;
- Rock Island Avenue from 2nd Street North to the alleyway located south of 115 Rock Island Avenue;
- A portion of the western sidewalk of Mosley Avenue from 2nd Street extending approximately 250 feet to the south;
- A portion of parking lot located at 1st Street North and Washington extending from 923 1st Street North to Mosley Avenue
- Mosley Avenue from 1st Street North to the alleyway south of 111 Mosley Avenue;
- The eastern sidewalk of Mead Street from 1st Street North to the alleyway located south of 115 Rock Island Avenue.

WHEREAS, all alcohol vendors will be licensed to sell alcoholic liquor within the boundaries of the proposed Common Consumption Area by filing a written request with the State of Kansas Division

of Alcohol Beverage Control to participate in the Common Consumption area (ABC Form #838) or by obtaining a temporary permit for such sale to be issued by the State of Kansas and the City of Wichita, or shall sell pursuant to a caterer's license issued by the State of Kansas and the City of Wichita by providing the required notification pursuant to K.S.A. 41-2643, and

WHEREAS, the applicant has agreed to abide by all rules and regulations for a Common Consumption Area as set forth in K.S.A. 41-2659 and Chapter 4.08 of the Code of the City of Wichita, and

WHEREAS, the application for a Common Consumption Area has been reviewed by City staff as required by Section 4.08.020(B) of the City Code and any written comments have been provided to the City Council for consideration in approving the application, and

WHEREAS, the applicant has sent notification of the application to all property owners in the vicinity of the proposed Common Consumption Area and a public hearing has been held as required by Section 4.08.020(C) of the Code of the City of Wichita.

NOW, THEREFORE, BE IT RESOLVED that the City Council, pursuant to and in consideration of the factors set forth in Section 4.08.030 of the Code of the City of Wichita, grants its approval for the designation of a Common Consumption Area upon property as mentioned above. Such designation shall be effective on Saturday, September 16, 2023 from 11:00 am until 11:00 pm with alcohol possession and consumption allowed thereon. Consumption of alcoholic liquor is allowed throughout all portions of the proposed Common Consumption Area, and no portion of the Common Consumption Area will be open to vehicular traffic.

ADOPTED by the governing body of the City of Wichita, Kansas, this 12th day of September 2023.

CITY OF WICHITA, KANSAS

By _____
Brandon Whipple, Mayor

ATTEST:

Jamie Buster
City Clerk

Approved as to Form:

Jennifer Magaña, City Attorney and
Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Downtown Restroom and Hydration Station Improvements
(Districts I and VI)

INITIATED BY: Department of Park & Recreation
Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the project budget and adopt the bonding resolution.

Background: On December 6, 2022, the City Council approved the sale of 14,496 square feet of A. Price Woodard Jr. Memorial Park land adjacent to the Hyatt Regency Hotel at 400 West Waterman. The proceeds from the sale were required to go towards improving the park. Additionally, the restrooms in A. Price Woodard Jr. Memorial Park have been closed for years.

Naftzger Park is the most programmed and visited park in downtown Wichita. The park has a unique ability to serve everyday users as well as large marquee community events. From January through July 2023, there have been nearly 30 events solely managed by Park & Recreation staff with almost 4,000 attendees in total. Currently there are no restrooms within the park.

Drinking fountains are sparse in downtown Wichita. Providing hydration stations will offer opportunities for the public to keep hydrated during social events in the summer months.

Analysis: New modern and durable restrooms would provide both parks with facilities that will be highly used during downtown events and by daily park visitors. The hydration stations will improve pedestrian experience by providing a place to get a drink of water and/or refill water bottles.

A restroom will be provided at A. Price Woodard Jr. Memorial Park and at Naftzger Park. A hydration station will be installed at Naftzger Park and at Old Town Square. Two additional hydration stations will be installed in downtown Wichita at locations yet to be determined. Any remaining funding will be used to make updates to existing downtown restrooms and/or drinking fountains.

Financial Consideration: The Adopted 2024-2033 Capital Improvement Program includes \$435,000 for park restrooms and is funded by General Obligation bonds. Funding of \$195,310 is available from the land sale for a total budget of \$630,310. Staff recommends initiating the full amount at this time.

Legal Consideration: The Law Department has reviewed and approved the bonding resolution as to form.

Recommendation/Actions: It is recommended that the City Council approve the budget, adopt the bonding resolution, and authorize the necessary signatures.

Attachment: Bonding Resolution.

RESOLUTION NO. 23-374

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable to make certain public improvements described as follows:

Labor, materials, and equipment necessary for the design, construction, and improvements of restrooms at A. Price Woodard Jr. Memorial Park and Naftzger Park and hydration station improvements within downtown Wichita. As funding allows, other improvements may be prioritized and developed. Funds may also be used at the discretion of the Board and/or City and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

(the “Project”) and to provide for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of **\$435,000.00** in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 2. Project Financing. All or a portion of the costs of the Project, interest on financing and administrative and financing costs shall be financed with the proceeds of general obligation bonds of the City (the “Bonds”). The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on September 12, 2023.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Design Concept for Douglas Avenue from Seneca Street to Meridian Avenue (Districts IV and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the design concept.

Background: On July 12, 2022, the City Council approved funding and a design contract with WSP to develop concepts for Douglas Avenue from Seneca Street to Meridian Avenue. Public open house meetings were held on September 15, 2022, and October 26, 2022. On April 10, 2023, a concept that was developed based on input received from the open houses was presented to the Wichita Bicycle and Pedestrian Advisory Board (WBPAB). After hearing the item, WBPAB asked staff to look at alternate design options for cyclist safety. On May 8, 2023, the WBPAB approved the newly developed design concept. On June 5, 2023, the District Advisory Board (DAB) IV unanimously opposed the design concept. On June 12, 2023, the DAB VI unanimously approved the design concept. On August 7, 2023, the design concept was returned to the DAB IV with additional information. The DAB IV voted 6-2 in opposition of the design concept.

Analysis: Douglas Avenue from Seneca Street to Meridian Avenue is currently striped as a two-lane roadway with poor drainage, pavement deterioration, and narrow sidewalks. On-street parking is allowed throughout the corridor but is not marked. The existing street width is approximately 48-feet-wide, providing enough space for motorists to drive as a four-lane roadway where parked vehicles are not present. This condition leads to confusion with drivers as to whether it is a two-lane roadway or four-lane roadway.

The proposed design concept includes pavement reconstruction, improved storm water sewer, six-foot-wide sidewalks, and signalization improvements to the existing pedestrian crossings. The roadway will be striped as a three-lane section with shared-lane markings for cyclists and clearly defined on-street parking. Construction is planned to begin in 2024.

Financial Considerations: The existing budget of \$225,000 in Local Sales Tax was approved by the City Council on July 12, 2022.

Legal Considerations: The Law Department has reviewed and approved this item as to form.

Recommendation/Action: It is recommended that the City Council approve the design concept.

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: 2024 Cultural Funding Allocation Recommendations (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

Recommendation: Approve the 2024 funding allocations recommended for arts and cultural organizations by the Cultural Funding Committee.

Background: In 2005, the City Council formed the Cultural Funding Committee, which consists of 11 members. The City Council appoints seven members, and the Arts Council appoints four members. The Committee makes funding recommendations to the City Council for Cultural Funding allocations to arts and cultural organizations.

In 2013, the City Council approved an update to the 2008 Cultural Arts Plan. Notable changes to the Plan included:

- The creation of three separate grant categories: Cultural Funding Operational Grants that are open to application from 501(c)(3) arts and cultural organizations in Wichita; Developing Arts Grants that are open to 501(c)(3) organizations with annual operating budgets less than \$50,000 for technical assistance; and Artist Access Grants, given to professional and emerging artists for professional development;
- The grouping of Cultural Funding Operational Grant applications by the size of the applicant organization's annual operating budget, allowing like-sized organizations to compete against like-sized organizations. Small organizations have annual operating budgets of \$249,999 or less. Medium organizations have annual operating budgets of \$250,000 to \$499,999 and large organizations have operating budgets of \$500,000 or more; and
- Reclassifying Group One organizations as "Cultural Institutions." Cultural Institutions enter Operating Partnership Agreements with a designated funding amount adjusted annually to reflect changes in property tax revenue. Cultural institutions are not eligible for Cultural Funding Operational Grants.

On February 2, 2023, the Cultural Funding committee voted to delay the start of the Artist Access application process to late 2023 and reserve \$10,000 to fund any potential applicants, with the intention to reallocate any extra funds not used for Artist Access grants to the top-scoring Operational Grants recipients. This change was made to better serve the intended individual artist recipients of the Artist Access grants.

Analysis: The Cultural Funding Committee reviewed the 2024 Operational Grants and Developing Arts Grants Cultural Funding applications. Applications were evaluated based on Quality of Organization, Financial Stability, and Community Impact. The committee recommended awarding grants to 24 applicants in the Operational Grants category. The two Developing Arts applications received this year were not funded due to program criteria. Each organization that receives funding will agree to provide the City with services detailed in its grant application, grant expenditure reports, and key performance outcome data.

Financial Consideration: The 2024 Adopted Budget amount to be allocated for grants in 2024 is \$432,708. The Cultural Funding Committee recommendations are aligned with this budgeted amount.

Legal Consideration: Upon City Council approval for the funding recommendations, the Law Department will review contracts with grant recipients.

Recommendations/Action: It is recommended that the City Council approve the funding allocations recommended for arts and cultural organizations by the Cultural Funding Committee and authorize the necessary signatures.

2024 Recommended Cultural Funding Allocations

Size	Organization Name	FY23 Allocated	FY24 Score	FY24 Request	FY24 Recommended
L	Exploration Place	\$63,000	88.2	\$75,000	\$50,700
L	Wichita Symphony Society	\$41,000	83.7	\$75,000	\$41,200
L	Mark Arts	\$28,000	83.6	\$75,000	\$41,200
L	Arts Partners, Inc.	\$25,000	80.2	\$40,000	\$30,400
L	Music Theatre Wichita	\$42,000	79.0	\$75,000	\$38,800
L	The Kansas African American Museum	\$28,000	78.2	\$40,000	\$26,100
L	Ulrich Museum	\$40,000	75.5	\$50,000	\$26,100
L	Orpheum Performing Arts Centre	\$18,000	72.1	\$75,000	\$25,900
L	Wichita Public Library Foundation	\$29,000	71.8	\$30,000	\$14,400
L	PBS Kansas	Did Not Apply	71.5	\$75,000	\$13,600
L	KMUW	Did Not Apply	66.0	\$75,000	\$13,300
L	Tallgrass Film Association	\$26,500	N/A	\$42,000	No Required Financial Audit
L	Wichita Children's Theatre	\$20,000	N/A	N/A	Did Not Apply
L	Storytime Village	\$13,500	N/A	\$44,000	No Required Financial Audit
M	Ballet Wichita	\$8,000	83.8	\$36,721	\$22,700
M	Friends of Great Plains Nature Center	\$12,000	74.2	\$29,000	\$16,200
M	Forum Theatre Company	Did Not Apply	68.7	\$27,710	\$10,000
M	Wichita Grand Opera	\$7,125	68.4	\$30,454	\$9,700
M	Regina Klenjoski Dance Company	\$8,000	64.4	\$26,502	\$4,600
S	Harvester Arts	\$10,696	77.3	\$33,936	\$17,300
S	Opera Kansas	Did Not Apply	74.9	\$3,977	\$2,700
S	Wichita Chamber Chorale	Did Not Apply	71.9	\$3,796	\$2,300
S	ARISE	\$4,500	70.1	\$16,000	\$6,300
S	Wichita Jazz Festival	Did Not Apply	68.3	\$7,245	\$3,200
S	Metropolitan Ballet	Did Not Apply	64.2	\$13,504	\$2,600
S	McCormick School Museum, Inc	\$600	62.1	\$4,005	\$1,500
S	MakeICT	Did Not Apply	60.7	\$13,967	\$1,900
	Artist Access Grant Recipients FY23	\$2,787	N/A	N/A	Not Applicable
	Developing Arts – Mulberry Arts	Did Not Apply	N/A	\$10,000	Not Funded
	Developing Arts – Music on Site	\$5,000	N/A	\$10,000	Not Funded
	Artist Access Grant – Reserved	Not Applicable	N/A	N/A	\$10,008
	Total Funding	\$432,708		\$1,037,817*	\$432,700

*Two unfunded organizations not reflected in total.

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Creation of Chapter 3.40 of the Code of the City of Wichita Relating to Short-Term Rentals

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Recommended Action: Place the ordinance on first reading and authorize the necessary signatures.

Background: In April 2021, a shooting occurred at a home in the Crown Heights neighborhood which was being used as an Airbnb. Since that time, City staff have worked with community stakeholders to obtain input as to how short-term rentals should be regulated. In response to this input, staff have worked to develop potential licensing requirements for short-term rentals. Feedback regarding the proposed regulation was collected over a three-year period at multiple events, including: one City Council workshop; six District Advisory Board meetings; three Metropolitan Area Planning Commission (MAPC) Advance Plans Committee meetings; three MAPC meetings; and meetings with a variety of stakeholders.

On March 9, 2023, the MAPC Advance Plans Committee endorsed the proposed licensing requirements.

On May 11, 2023, the MAPC received a presentation on the proposed short-term rental regulatory changes and voted (7-5) to endorse proposed licensing requirements for short-term rentals.

Following the MAPC meeting, City staff made a minor revision to the proposed licensing reducing the number of violations in a 12-month period to result in revocation of the short-term rental license from three to two. Staff recommended this change because it is unlikely that any responsible party could be found to have committed three violations in 12 months, due to the amount of time to adjudicate a violation.

Analysis: The proposed ordinances establish a licensing requirement for the operation of short-term rentals.

A short-term rental is generally defined as the practice of renting out a furnished room or dwelling unit for a short-term stay. A short-term stay is defined as one less than twenty-eight days in length.

The proposed licensing ordinance requires:

- All short-term rentals to be licensed.
- Liability insurance (which could be obtained from a 3rd party or booking platform), the posting of a good neighbor policy, and the designation of a contract for 24/7 reporting of issues.
- Compliance with codes and inspections based on complaints.
- An annual fee of \$225 per short term rental.
- The maximum overnight occupancy is limited to two adults per bedroom plus an additional two adults. The occupancy is based on adults (over 12 years old) and there is no occupancy limit for children.

- Gatherings are limited to two times the maximum overnight occupancy or 20 persons, whichever is less. Gatherings must disburse by 10:00 pm.
- Short term rentals can only be advertised for use if they are properly licensed. Advertisements must include the license number.
- Existing short term rental owners/operators have 6 months to come into compliance with licensing requirements.
- If the property requires an administrative adjustment to bring the property into compliance with the UZC, time for compliance is extended to 12 months.

Financial Considerations: All licensing fees collected are to be used for enforcement of the ordinance.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: Place the ordinance on first reading and authorize the necessary signatures.

Attachments: Proposed Ordinance.

First Published in the *Wichita Eagle* on September 22, 2023

ORDINANCE NO. 52-265

AN ORDINANCE CREATING CHAPTER 3.40 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO SHORT-TERM RENTAL PROPERTY LICENSING.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.40.010 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Short-Term Rental Licensing.

SECTION 2. Section 3.40.020 of the Code of the City of Wichita is hereby created to read as follows:

“Intent and Purpose.

“This Chapter applies to the owning and operation of Short-Term Rentals as defined by this Chapter. The purpose and intent of this Chapter is to establish standards to regulate and provide a licensing process for Short-Term Rentals to protect the health, safety and general welfare of Short-Term Rental Transient Guests and neighboring residents of the City of Wichita.”

SECTION 3. Section 3.40.030 of the Code of the City of Wichita is hereby created to read as follows:

“Definitions.

Advertise means the act of drawing the public’s attention to a Short-Term Rental to promote the availability of the dwelling unit for use as a Short-Term Rental. Such advertising may be found in any medium, including but not limited to, newspaper, magazine, brochure, website, or mobile application.

Booking Service means any reservation and/or payment service provided by a person or entity that facilitates a Short-Term Rental transaction between an Owner and a prospective Transient Guest, and for which the person or entity collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation and/or payment services provided for the Short-Term Rental transaction.

Dwelling Unit means a building or portion of a building that contains living facilities for not more than one family and that includes provisions for sleeping, cooking, eating and sanitation. For the purposes of this ordinance, this definition does not include hotels or motels.

Hosting Platform means a person or entity that participates in the Short-Term Rental business by providing, and collecting or receiving a fee for, Booking Services through which an Owner may offer premises to a Transient Guest on a short-term basis. Hosting Platforms usually, though not necessarily, provide Booking Services through an online platform that allows an Owner to advertise the premises through a website provided by the Hosting Platform and the Hosting Platform conducts a transaction by which potential Transient Guests arrange their use and their payment, whether the would-be Transient Guest pays rent directly to the Owner or to the Hosting Platform.

Inspection Team means, including but not limited to, members of the Metropolitan Area Planning Department, the Metropolitan Area Building Construction Department, and the Wichita Fire Department who are responsible for inspections to ensure housing, zoning building, fire and neighborhood code compliance of Short-Term Rentals.

License means the authority to conduct the business of owning or operating a Short-Term Rental Unit(s).

Licensee means any person to whom a current License has been issued under this Chapter authorizing such person to conduct the business of owning or operating a Short-Term Rental Unit(s) within the City Limits.

Licensed Premises means the premises specified in an approved application for a License under this Chapter which are owned or operated by the Licensee.

MABCD means the Director of the Metropolitan Area Building and Construction Department and his or her designees.

MAPD means the Director of the Metropolitan Area Planning Department and his or her designees.

Non-Owner Occupied means any Dwelling Unit, which is not the Owner's primary place of residence, and which is not considered to be Owner Occupied as defined by this Chapter. Non-Owner Occupied also includes Short-Term Rentals in which the Owner resides in the residence, is the Owner's primary place of residence, but the owner is not onsite during the period the unit(s) is rented as a Short-Term Rental.

Owner means the individual(s), natural or corporate, in possession of lawful title to real property. As used in this Chapter, Owner may also include any authorized agent of the possessor

of lawful title to real property. The term “Owner” may be used interchangeably with the terms “Person” and “Licensee.”

Owner Occupied means any Dwelling Unit in which the Owner resides and which is the Owner’s primary place of residence. To be considered Owner-Occupied, the Owner must be onsite during the period of time the unit(s) is rented as a Short-Term Rental.

Person means any individual, Owner, operator, company, corporation, partnership, or association.

Resident Agent means any person or business entity, that resides or are located within the City Limits of the City of Wichita, however organized, appointed by an Owner or Licensee, who shall have the express authority to receive communications, service of process, summons, notices and other legal process on behalf of the Owner or Licensee.

Responsible Party means the manager or assistant manager, Owner, Licensee or any other person in charge of the Short-Term Rental Unit(s) licensed under this Chapter. Such term shall include any person who resides, uses, owns, manages or controls property where a Short-Term Rental License is required.

Short-Term Rental means the use of a residential Dwelling Unit or structure to provide rooms for temporary lodging or lodging and meals for Transient Guests for a period of 28 days or less for which compensation is paid to the Owner or Responsible Party. The dwelling or structure may be Owner or manager occupied.

Short-Term Rental Unit means the Dwelling Unit or portion thereof that is rented for 28 days or less. Each Dwelling Unit within a multifamily apartment building that is rented for 28 days or less is considered a Short-Term Rental Unit.

Transient Guest means a person who occupies a room for a period of not more than 28 days at a time other than the Owner's immediate family (related by blood, marriage, or adoption) or any person residing with the Owner in a Short-Term Rental.

Zoning Administrator means the individual or entity designated by the Planning Director to enforce the provisions of this Chapter.”

SECTION 4. Section 3.40.040 of the Code of the City of Wichita is hereby created to read as follows:

“Short-Term Rentals Permitted.

- a. Owner Occupied Short-Term Rental Units are allowed, as a matter of right, as permitted by the Wichita Sedgwick County Unified Zoning Code.
- b. Non-Owner Occupied Short-Term Rental Units are allowed as permitted by the Wichita-Sedgwick County Unified Zoning Code. If additional zoning approval is required, an application for such zoning approval must be submitted to MAPD before an application for licensing is submitted to the City's Licensing Department.

SECTION 5. Section 3.40.050 of the Code of the City of Wichita is hereby created to read as follows:

“General Provisions.

Each Owner or Responsible Party shall:

- a. Maintain a valid City License for purposes of operating any one or more Short-Term Rental(s) within the City of Wichita. A separate license is required for each dwelling unit or structure utilized as a Short-Term Rental.

- b. Pay all applicable local, state, and federal taxes, including income taxes, associated with the operation of each Short-Term Rental Unit;
- c. Maintain liability insurance coverage for each Short-Term Rental Unit in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per Short-Term Rental Unit to insure against damages to guest(s) caused by the Owner or Responsible Party, and to insure against damages caused by Short-Term Rental guest(s) or the Owner when such damages are incurred by other persons including, but not limited to, neighbors or invited guests. Liability insurance provided by a third party, such as an online booking platform, is acceptable proof of the required liability insurance;
- d. Clearly display inside each Short-Term Rental Unit a copy of the applicable Short-Term Rental License issued pursuant to this Chapter;
- e. Include the Short-Term Rental License number issued by the City of Wichita on all marketing materials for each respective Short-Term Rental Unit. For the purposes of this subsection, marketing materials include, but are not limited to: a business card, printed letterhead, any other printed or written material, or any internet posting/publication, postings in any Booking Service or Housing Platform, electronic billboard, or telephonic transmission of information, designed to inform persons of the Short-Term Rental service offered by the Owner or Responsible Party;
- f. Display inside each Short-Term Rental Unit a current “Good Neighbor Agreement.” The Good Neighbor Agreement will be provided by the City and shall inform the Transient Guests of the maximum overnight occupancy,

maximum gathering occupancy and relevant City ordinances, and explain that Transient Guests of any Short-Term Rental Units are required to comply with all relevant City ordinances and State Statutes;

- g. Be available twenty-four (24) hours per day, seven (7) days a week or have designated a Responsible Party to be available to respond to complaints regarding the operation or occupancy of the Short-Term Rental. Such person shall be available to come to the premises, if required , within thirty minutes to resolve any complaint ;
- h. Comply with all the terms and conditions of this Chapter and all other applicable City codes and State statutes, including but not limited to: Wichita-Sedgwick County Unified Building and Trade Code, Wichita-Sedgwick County Unified Zoning Code, International Fire Code, and Chapters 7, 8, 15, 18, 19, 20, 21, 22 and 28 of the Code of the City of Wichita and any amendments thereto.
- i. If licensed as Owner-Occupied remain on the premises of the Short Term Rental during such time as the dwelling unit is rented as a Short-Term Rental.
- j. Not discriminate against any person or persons on the basis of race, color, sex, religion, national origin, ancestry, disability, sexual orientation, sexual identity, gender identity or age; in the rental or leasing a Short-Term Rental Unit,
- k. Not allow the occupancy of guests to exceed the number of occupants allowed pursuant to Section 3.40.120.

SECTION 6. Section 3.40.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“License Required.

- a. It shall be unlawful for any Owner or Responsible Party to operate, rent, own maintain, or otherwise permit or allow any Short-Term Rental without a valid License issued by the City’s Licensing Department in accordance with this Chapter upon the payment of a license fee. The annual license fee for Short-Term Rentals is \$225.00. A separate license is required for each dwelling unit or structure utilized as a Short-Term Rental. Revenue from fees collected pursuant to this paragraph shall be used to offset costs to administer, manage and enforce this Chapter.
- b. It shall be unlawful for any Owner, Responsible Party or other person to advertise in any medium, including but not limited to Hosting Platforms, Booking Services, newspapers, magazines, brochures, websites or mobile applications the use of any structure as a Short-Term Rental that is not properly licensed pursuant to the provisions of this Chapter.
- c. It shall be unlawful for any Owner, Responsible Party or other person to advertise in any medium, including but not limited to Hosting Platforms, Booking Services, newspapers, magazines, brochures, websites or mobile applications the use of any structure as a Short-Term Rental that is not properly licensed pursuant to the provisions of this Chapter without including the current license number assigned to the Short-Term Rental by the City’s Licensing Department.
- d. It shall be unlawful for any Owner, Responsible Party or other person to violate the terms and conditions of this Chapter.

SECTION 7. Section 3.40.070 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Inspections.

- a. Upon the filing of a complaint with the Zoning Administrator , Short-Term Rental Units shall be inspected by members of the Inspection Team, as set forth in this Chapter.
- b. The Inspection Team shall perform the inspection in compliance with applicable city codes for the purpose of verifying that the premises are in compliance with the City’s housing, fire, building, zoning and all other applicable City Codes;
- c. Following such inspections, if Code violations are found to exist, the Inspection Team must perform a re-inspection of the premises. No License shall be re-issued until the re-inspection is completed and any violations remedied;
- d. The fee for such re-inspection shall be \$50.00.
- e. Any Owner or Responsible Party who fails to appear for a scheduled inspection or re-inspection, or any Owner or Responsible Party that refuses consent to inspect at a scheduled inspection, shall be charged a re-inspection fee of \$50.00. A scheduled inspection or re-inspection may be rescheduled with no re-inspection fee assessed if rescheduled within no less than seven (7) days’ prior notice to MAPD.”

SECTION 8. Section 3.40.080 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Application.

Before any License shall be granted by the City’s licensing department, an application shall be filed for such License setting forth the following facts:

- a. The name, address, and date of birth of the applicant and telephone number where the applicant can be reached between the hours of 8:00 a.m. and 5:00 p.m.;

- b. The name, address, and date of birth of the applicant, Owner, Manager and other Responsible Party of the Short-Term Rental. If a corporation, all the names, addresses, and dates of birth of the officers, managers or directors of such corporation and any individual who owns twenty-five (25) or more percent of the stock of such corporation. If the License is to be held by a corporation, the Resident Agent and registered office of said corporation. If the applicant is a partnership, all the names, addresses, and dates of birth of all partners of the partnership;
- c. For Owners applying for an Owner Occupied Short-Term Rental license, two documents giving proof of Owner occupation must be provided. Each document must be current and show the Owner's name and address matching that of the property to be utilized for a Short-Term Rental. Acceptable documentation includes: (1) A Kansas Driver's License; (2) other valid State of Kansas Identification Card; (3) Sedgwick County Voter Registration Card; (4) current employer verification of residential address from the employer on company letterhead; (5) current automobile, life or health insurance policy; (6) paycheck/check stub; (7) IRS W-2 Form; (8) a bank statement or (9) other documentation showing the owner's residential address;

Identifying information (Drivers License Numbers, Account Numbers and Social Security Numbers) for the individual(s) may be redacted on copies submitted to the City's licensing department.
- d. If the Owner does not have a local address within thirty (30) miles of the City limits of the City of Wichita, then he or she must appoint a person or management company, located within the City limits of the City of Wichita to serve as his or her

Resident Agent by providing the name, company name, if any, address, e-mail address, if any, and telephone number of the Resident Agent. Any Resident Agent appointed by the Owner shall have written, express and actual authority to receive communications, service of process, summons, notices and other legal process on behalf of the Owner.

- e. If the Owner appoints a Resident Agent, the application must be accompanied by the Owner's written, notarized authorization granting the Resident Agent express, actual authority to sign documents, to receive service, and to act on the behalf of the Owner or Licensee;
- f. The physical address of the Short-Term Rental Unit;
- g. Maximum occupancy of the Short-Term Rental Unit(s);
- h. Number of rooms, units or areas to be used as a Short-Term Rental Unit;
- i. The name, phone number, email, and business address of the Owner or Responsible Party who will be available twenty-four (24) hours per day, seven (7) days a week to respond to complaints regarding the operation or occupancy of the Short-Term Rental. Such person shall be available to come to the premises, if required , within thirty minutes to resolve any complaint.;
- j. A scaled floor plan on a form provided by the City Licensing Department showing the layout and square footage of the Short-Term Rental Unit(s). Such floor plan, at a minimum, shall include a designation and location of bedrooms, bathrooms, and kitchens, the dimensions of such rooms and the means of ingress and egress within each room and the dwelling unit.

- k. A notarized statement signed by the Owner or Responsible Party that the Short-Term Rental will be operated in compliance with all the terms and conditions of this Chapter and all other applicable City Codes and State statutes, including, but not limited to: Wichita-Sedgwick County Unified Building and Trade Code, Wichita-Sedgwick County Unified Zoning Code, International Fire Code, and Chapters 7, 8, 15, 18, 19, 20, 21, 22 and 28 of the Code of the City of Wichita and any amendments thereto;
- l. Proof of insurance as required by Section 3.40.050 of this Chapter;
- m. A notarized statement signed by the Owner or Responsible Party that all applicable taxes on the property have been paid and that any income from the rental of such property is being reported as taxable income to the Internal Revenue Service;
- n. A statement as to whether the applicant has ever had any License denied, revoked, or suspended by the City of Wichita or the State of Kansas or any other governmental entity, the reason therefor and the business activity or occupation of the individual subsequent to such suspension, revocation or denial;
- o. A statement that the Owner, Responsible Party, or any employee thereof will not, in renting or leasing a Short-Term Rental Unit, discriminate against any person or persons on the basis of race, color, sex, religion, national origin, ancestry, disability, sexual orientation, sexual identity, gender identity or age; and

SECTION 9. Section 3.40.090 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Denial of License.

A License shall be denied or not renewed if one or more of the following conditions exist:

- a. The premises does not comply with the health, housing, fire and zoning codes of the City of Wichita, including but not limited to: Wichita-Sedgwick County Unified Building and Trade Code, Wichita-Sedgwick County Unified Zoning Code, International Fire Code, and Chapters 7, 8, 15, 18, 19, 20, 21, 22 and 28 of the Code of the City of Wichita and any amendments thereto;
- b. The applicant has knowingly made a false, misleading or fraudulent statement of fact to the City of Wichita on the application;
- c. The application is incomplete or contains any material misrepresentation;
- d. Within the five (5) years prior to the date of application, the applicant, or any person with a financial interest of twenty-five (25) percent or greater in the Short-Term Rental stated in the application, has committed or allowed to be committed while operating any Short-Term Rental any violation of this Chapter; and
- e. Within the five (5) years prior to the date of application, the applicant, or any person with a financial interest of twenty-five (25) percent or greater in the Short-Term Rental stated in the application has had a Short-Term Rental License suspended or revoked pursuant to any provision of this Chapter.”

SECTION 10. Section 3.40.100 of the Code of the City of Wichita is hereby created to read as follows:

“Term of License.

- a. A Short-Term Rental License expires one (1) year after the date of issuance.
- b. A Short-Term Rental License is not transferable to another person or location. A change in ownership shall require the new Owner or Responsible Party to pay a new application fee and secure a new Short-Term Rental License.”

SECTION 11. Section 3.40.110 of the Code of the City of Wichita is hereby created to read as follows:

“Inspection of Property During Period of License.

Exterior Inspections:

The Wichita Fire Department, Metropolitan Area Planning Department and Metropolitan Area Building and Construction Department (Inspection Team) and any other code officers shall have the right to inspect the exterior premises each Short-Term Rental Unit, without prior notice, during the period of the License to determine compliance with this Ordinance and the Wichita-Sedgwick County Unified Building and Trade Code, Wichita-Sedgwick County Unified Zoning Code, International Fire Code, and Chapters 7, 8, 15, 18, 19, 20, 21, 22 and 28 of the Code of the City of Wichita and any amendments thereto.

Interior Inspections:

Absent exigent circumstances, whenever it is necessary to make an inspection to enforce any provisions of this Chapter, the Wichita-Sedgwick County Unified Building and Trade Code, Wichita-Sedgwick County Unified Zoning Code, International Fire Code, and Chapters 7, 8, 15, 18, 19, 20, 21, 22 and 28 of the Code of the City of Wichita and any amendments thereto or whenever the Inspection Team has reasonable suspicion that there exists conditions which make the property unsafe, dangerous, hazardous, or a public nuisance, the Inspection Team shall have the right, after giving seventy-two (72) hours' written notice to the Owner or Licensee, to enter a Short-Term Rental, at all reasonable times, to inspect the same or to perform any duty imposed by this Chapter provided that such entry is made in accordance with the law. At the time of inspection, if the Short-Term Rental is occupied, then the Inspection Team shall first attempt to make contact with the occupant, present proper credentials, and request entry. If the Short-Term Rental is

unoccupied, then the Inspection Team shall contact the Owner, Licensee, or Registered Agent thereof to request entry. If the Inspection Team is unable to make contact with the Owner, Licensee, or Registered Agent, or the Inspection Team is denied consent to enter, then the Inspection Team shall have the right to seek entry by way of an administrative search warrant or other lawful means.”

SECTION 12. Section 3.40.120 of the Code of the City of Wichita is hereby created to read as follows:

“Maximum Occupancy–Gatherings.

- a. The maximum overnight occupancy of a Short-Term Rental Unit is limited to a maximum of two adults per bedroom, plus an additional two adults for each unit excluding studio or efficiencies, such that a two-bedroom house would have an overnight occupancy of six adults, or a three-bedroom house would have an overnight occupancy of eight adults. For the purposes of this subsection, an adult is any person over 12 years of age;
- b. Gatherings of persons in excess of the maximum overnight occupancy prescribed by Subsection “a.” above, shall not exceed two times the maximum overnight occupancy or 20 persons, whichever is less;
- c. All such gatherings shall conclude and attendees disburse by 10:00 p.m.;
- d. In addition to the Zoning Administrator, the provisions of this section may be enforced by any law enforcement officer;
- e. Upon violation of this section, the Zoning Administrator or a law enforcement officer may issue a criminal complaint setting forth the violation of this subsection; and

- f. Upon conviction for violation of this subsection, the person shall be deemed guilty of a misdemeanor and shall be punished by a fine or not to exceed five hundred dollars (\$500) and/or imprisonment of a term not to exceed six (6) months. Each day that any violation of this Chapter continues shall constitute a separate offense and shall be punishable hereunder as a separate violation.”

SECTION 13. Section 3.40.130 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Notice of License Denial/Suspension/Revocation.

The Zoning Administrator shall provide written notice to the Owner or Responsible Party of the intent to deny, revoke, or suspend a Short-Term Rental License by personal service or certified mail, return receipt requested.

The notice shall be sent to the mailing address of the Licensee on file with the City’s Licensing Department. Such notice shall detail the reason or basis for the denial, suspension or revocation of the License. It shall also specify the rights of the Licensee to appeal any such denial, revocation or suspension.”

SECTION 14. Section 3.40.140 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Suspension of License.

- a. A License may be suspended by the Zoning Administrator for a period not to exceed thirty (30) days, if:
1. The Licensee or other Responsible Party knew or should have known that activities on the Licensed Premises were in violation of Section 3.40.120 of

the Code of the City of Wichita relating to Maximum Occupancy and Gathering limitations for the Licensed Premises.

2. The premises do not comply with the provisions of this Chapter and/or the health, housing, fire and zoning codes of the City of Wichita, including but not limited to: Wichita-Sedgwick County Unified Building and Trade Code, Wichita-Sedgwick County Unified Zoning Code, International Fire Code, and Chapters 7, 8, 15, 18, 19, 20, 21, 22 and 28 of the Code of the City of Wichita and any amendments thereto.”

SECTION 15. Section 3.40.150 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Revocation of License.

A License may be revoked by City Council at the recommendation of the Zoning Administrator:

- a. If a Licensee or Responsible Party has fraudulently obtained the License by giving false information in the application therefor;
- b. If the Licensee or Responsible Party has committed two (2) or more instances of violations of this Chapter, or other applicable City ordinances or State statutes within a 12-month period;
- c. If the Licensee or Responsible Party fails to maintain required liability or Short-Term Rental insurance;
- d. If a Licensee or Responsible Party has become ineligible to obtain a License under this Chapter; and

- e. If a Licensee or Responsible Party fails to bring the premises into compliance with the terms and conditions of this Chapter within the time frames for initial compliance as set forth in Section 3.40.190.
- f. For the nonpayment of any License or inspection fees payable under this Chapter.”

SECTION 16. Section 3.40.160 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Appeals Process.

- a. Unless otherwise specified by this Chapter, any Applicant or Licensee aggrieved by the denial or suspension of a Short-Term Rental License may file with the City Clerk a written notice of appeal to the City Council within ten (10) business days of the decision by the Zoning Administrator or his/her designee. The Notice of Appeal shall specify:
 - 1. the name and address of the appellant;
 - 2. the date of application;
 - 3. the action appealed from;
 - 4. the date of the action appealed from; and
 - 5. the factual basis for the appeal.
- b. Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty (30) days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay the suspension or revocation of the License until the matter is heard by the City Council.

- c. The City Council or Council Appeal Panel may approve the denial, suspension, revocation, or overrule the denial, suspension, revocation or may modify the decision of the Zoning Administrator.
- d. The City Council's or the Council Appeal Panel's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, revocation, modification or suspension of the License by the City Council."

SECTION 17. Section 3.40.170 of the Code of the City of Wichita is hereby created to read as follows:

"Enforcement and Penalties.

- a. Except as otherwise provided, the Zoning Administrator has the duty and authority to enforce the provisions of this Chapter.
- b. The Administrator shall send a written notice by personal service or by First Class Mail to the Licensee, Responsible Party, Registered Agent, if one is established, or to the Owner of record as listed in the real property records of the Sedgwick County Clerk.
- c. The written notice must include:
 - 1. A statement that a violation of this Chapter has been observed or otherwise determined to exist;
 - 2. A brief description of the nature of the violation;
 - 3. With the exception of violations of Section 3.40.120, notice of a 30-day compliance period (or longer if appropriate in the reasonable

determination of the Zoning Administrator) within which to come into compliance; and

4. A reference to the penalty provisions of this Section.

- d. **Penalty.** With the exception of violations of Section 3.40.120, if the property has not been brought into compliance within the compliance period set forth by the notice prescribed under Subsection C above or any period of extension granted by the Zoning Administrator, any person who shall own, operate, or manage a Short-Term Rental in violation of a License granted under this Chapter, or without a License when a License is required by this Chapter, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500) and/or imprisonment of a term not to exceed six (6) months. Each day that any violation of this Chapter continues shall constitute a separate offense and shall be punishable hereunder as a separate violation.

In addition to the penalty described in this Section, the City may seek injunctive relief, or revocation of a License as further provided in this Chapter.”

SECTION 18. Section 3.40.180 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Violations not exclusive.

The provisions of this Chapter are in addition to any other violations enumerated within the ordinances of the Code of the City of Wichita. This Chapter in no way limits the penalties, actions or abatement procedures which may be taken by the City for a violation of any ordinance of the City of Wichita or Statute of the State of Kansas.”

SECTION 19. Section 3.40.190 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Initial Compliance.

With the exception of zoning approval, each Owner or Responsible Party is required to come into compliance with the terms and conditions of this Chapter within six (6) months of the effective date of the ordinance. If additional zoning approval is required, such approval must be obtained from the Metropolitan Area Planning Commission within twelve (12) months from the date of approval of this ordinance.”

SECTION 20. Section 3.40.200 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

“Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.”

SECTION 21. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 19th day of September 2023.

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, , City Clerk

Approved as to Form:

Jennifer Magaña
City Attorney and Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: An Ordinance Creating Chapter 5.08 of The Code of The City of Wichita, Kansas, Pertaining to Nuisance Parties.

INITIATED BY: Planning Department

AGENDA: New Business

Recommendation: Place the ordinance on first reading and authorize the necessary signatures.

Background: During discussions regarding the regulation of Short-Term Rentals, staff researched responses of other municipalities to address issues caused by gatherings in residential areas which pose enforcement issues for law enforcement and are a nuisance to neighborhoods. One solution adopted by other cities was an ordinance that would address residential locations which are used to host party gatherings, and which are a nuisance to residential neighborhoods.

Analysis: The proposed ordinances provide law enforcement additional tools to deal with residences used for nuisance parties. The ordinance provides:

1. A nuisance party is a social gathering of five (5) or more people on residential property in which certain nuisance type activities occur. These activities include:
 - Unlawful sale, furnishing, possession or consumption of alcoholic beverages;
 - Violations of provisions of Chapter 7.41 relating to noise;
 - Property damage, assault or battery, littering;
 - Outdoor urination or defecation in a place open to public view;
 - Conduct that threatens injury to persons or damage to property;
 - Trespassing on adjacent or adjoining property;
 - Indecent exposure, setting off fireworks or discharging firearms.
2. Law enforcement may ask that party activities cease, and participants disperse. If individuals do not disperse, a citation may be issued to the property owner.
3. Upon conviction, the offender may receive a fine from \$250 to \$2,500 or by imprisonment for not more than one year, or by both such fine and imprisonment.
4. The ordinances apply to all residential properties and is not limited to short-term rentals.

5. The ordinance does not replace existing processes for WPD to declare a property a “nuisance” based on excessive police calls pursuant to Chapter 8.2 of the City Code.

Financial Considerations: There is no impact to the General Fund as a result of this action.

Legal Considerations: The ordinance amendments have been drafted and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

Attachments: Proposed ordinance.

Org No. _____

First Published in *The Wichita Eagle* on September 22, 2023

ORDINANCE NO. 52-264

AN ORDINANCE CREATING CHAPTER 5.08 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO NUISANCE PARTIES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.08.010 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Definitions.

The following definitions apply to this Chapter:

Nuisance party is a social gathering of five (5) or more people on residential property that results in any of the following occurring at the site of the gathering, on neighboring property or on an adjacent public street:

1. Unlawful sale, furnishing, possession or consumption of alcoholic beverages;
2. Violation of any of the provisions of Chapter 7.41 relating to noise;
3. Conduct which constitutes assault or battery;
4. Property damage;
5. Littering;
6. Outdoor urination or defecation in a place open to public view;
7. The standing or parking of vehicles in a manner that obstructs the free flow of traffic upon public sidewalks, streets, or public rights of way;

8. Conduct that threatens injury to persons or damage to property;
9. Unlawful use or possession of marijuana or any drug or controlled substance;
10. Trespassing on adjacent or adjoining property;
11. Indecent exposure;
12. Setting off fireworks; or
13. Discharging firearms.”

SECTION 2. Section 5.08.020 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Nuisance parties prohibited.

It shall be unlawful for any owner or person having the right of possession of any residential premises, whether individually or jointly with others, to cause, allow or otherwise permit a social gathering on the premises to become a nuisance party.”

SECTION 3. Section 5.08.030 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Police order to disperse.

It shall be unlawful for any person not domiciled or residing at the site of the nuisance party to fail or refuse to leave the premises immediately after being told to leave by a police officer.”

SECTION 4. Section 5.08.040 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“Continuation of Nuisance Party constituting separate violation.

Continuation of a nuisance party an hour or more after an order to disperse has been given by police shall constitute a separate violation of 5.08.020.”

SECTION 5. **“Penalty.**

Upon a conviction of a violation of the provisions of this chapter a person shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 nor more than \$2,500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.”

SECTION 6. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 19th day of September 2023.

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

Approved as to Form:

Jennifer Magaña
City Attorney and Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: DER2023-00006 – Short-Term Rental Unified Zoning Code Changes

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Adopt the recommended amendments to the Unified Zoning Code regarding short term rentals (7-5).

MAPD Staff Recommendations: Adopt the proposed amendments to the Unified Zoning Code.

Background: A more expansive timeline of events is included as an attachment to this report. Below is an overview of recent events related to this time.

In April 2021, a shooting occurred during an Airbnb stay at a home in the Crown Heights Neighborhood. Since that time, City staff have worked with community stakeholders to provide information about the current regulations for short term rentals. In response to input, City staff have worked to develop potential regulation changes for short term rentals in Wichita. Staff have collected feedback about potential regulation changes during multiple events, including: one City Council workshop; six district advisory board meetings; three Metropolitan Area Planning Commission (MAPC) Advance Plans Committee meetings; three MAPC meetings; and meetings with a variety of stakeholders.

On March 9, 2023 the MAPC Advance Plans Committee received a presentation on the proposed short term rental regulation changes and approved a motion to recommend moving it on the full MAPC and initiating the staff recommendation actions to recommend that the full MAPC:

1. Initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.;
2. Approve the proposed Unified Zoning Code amendments;
3. Endorse the Wichita Municipal Code changes; and
4. Amend MAPC Policy 20.

On March 23, 2023, the MAPC approved setting the hearing date for April 13, 2023, to consider the proposed amendments to the Unified Zoning Code.

On April 13, 2023, the MAPC received a presentation on proposed regulation changes related to short term rentals in Wichita and held a public hearing. Multiple members of the public provided comments. The MAPC voted to defer the item so that the MAPC Advance Plans Committee can consider the proposed regulation changes at their May 11, 2023 meeting.

On May 11, 2023, the MAPC Advance Plans Committee received two presentations on the proposed short term rentals regulation changes – one on the proposed changes to the Unified Zoning Code and MAPC policy; and the other on the nuisance party house ordinance and the licensing ordinance. The Committee voted to recommend that the MAPC approve the proposed changes.

On May 11, 2023, the MAPC received a presentation on the proposed short term rental regulatory changes and voted (7-5) to:

- Initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.;

- Approve the proposed Unified Zoning Code amendments;
- Recommend that the governing bodies adopt the proposed Unified Zoning Code amendments;
- Amend MAPC Policy 20; and
- Recommend that the City Council approve the proposed Municipal Code changes.

Multiple members of the public commented on this item some in support and some with concerns.

Analysis: Community Mission

The City of Wichita Mission Statement is to be an exceptionally well-run City that:

- Keeps residents safe;
- Grows the economy;
- Builds dependable infrastructure; and
- Provides conditions for living well.

A short term rental is generally defined as the practice of renting out a furnished room or dwelling unit for a short-term stay. Short-term rentals can touch on all four areas of the City's mission/goals. The question for Wichita is if short-term rentals are a good fit for our community. If yes, then what is the best/preferred way for them to operate in Wichita? City of Wichita staff have worked since 2021 with approximately 16 events and opportunities for public input. The public input collected has been used to develop and refine the recommended changes to the Wichita-Sedgwick County Unified Zoning Code.

Proposed Changes

Wichita-Sedgwick County Unified Zoning Code

Below are highlights of the proposed changes to the Unified Zoning Code (the full text of proposed changes is attached). For ease of reading, the proposed changes are listed by Unified Zoning Code Article.

Article II - Rules of Construction and Definitions

- These changes would make short-term rental a defined term and clarify the relationship with other defined terms.

Article III –Use Regulations

- These changes would establish the where short-term rentals are allowed by right and where they require a zoning action (Conditional Use or Administrative Permit). In general, it would make STRs allowed by right - except if they are not owner occupied and located in SF-10, SF-5, TF-3, MF-18, or MF-29 districts. In those instances, a zoning action (Administrative Permit or Conditional Use) would be necessary.
- It would also prohibit the use of a Recreational Vehicle for a short-term rental.

Article V – Development Review Procedures

- A new section L would be created.
- It would be used to consolidate Administrative Permits into this area of the code. Currently, the Unified Zoning Code allows Administrative Permits for Wireless Communication Facility. However, it is located in a different section of the code. This change would streamline the Unified Zoning Code and make it easier to use/navigate.
- It would be expanded to a short-term rental Administrative Permit, which would allow property owners to apply for and the Planning Director to approve applications for short term rental uses that are not owner occupied.
- Article V.L.5, would specify that written notice must be mailed to the owners of all properties which Abut and are Contiguous to the application area.
- Article V.L.7, would prohibit the Planning Director from approving Administrative Permits for short term rentals if the Director finds that the proposed development would have adverse impacts or are protested by more than 50% of the owners of land which Abut and are Contiguous to the

- application area.
- Article V.L.8, would specify the timing of the Administrative Permit review process.
- Article V.L.9. would establish an Administrative Permit appeal process. This would include a process for the applicants to appeal and also for owners of land Abutting and Contiguous to the application site to protest. If a valid appeal or protest petitions representing more than 50% of the owners of land Abutting and Contiguous to the application site is submitted, then the application is forwarded as a Conditional Use to the Planning Commission.

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The public notices required by KSA 12-756 have been published. The MAPC has held the required public hearing and made a recommendation in conformance with KSA 12-756. The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council suspend City Council Policy #9 and allow public comment on this item, adopt the recommended amendments to the Unified Zoning Code, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 4 of 7 votes).

Alternatives:

- 1) Make modifications to the language or other findings;
- 2) Deny the proposed amendments to the Unified Zoning Code (requires a two-thirds majority, or 5 of 7 votes); or
- 3) Return the proposed amendments to the MAPC for reconsideration and indicate the reason for the MAPC to reconsider the item (requires 4 of 7 votes).

Attachments:

- Timeline of Events
- Existing Conditions, Regulations, Enforcement, and Other Communities
- Proposed Unified Zoning Code Changes
- Memo Short Term Rentals – Proposed UZC Administrative Permit Protest Examples
- Public Input through 2023-08-24
- 2023-04-13 MAPC Minutes Excerpt
- 2023-05-11 MAPC Minutes Excerpt
- Ordinance – Unified Zoning Code Short Term Rentals Changes

Timeline of Events

Wichita Short Term Rentals

- In April 2021, a shooting occurred during an Airbnb stay at a home in the Crown Heights Neighborhood.
- On April 21, 2021, the City hosted a virtual meeting for Crown Heights Neighborhood residents and stakeholders to discuss existing regulations for short-term rentals in Wichita.
- On February 8, 2022, the City hosted a virtual meeting for Crown Heights Neighborhood residents and stakeholders to review potential options for regulatory changes related to short-term rentals. The feedback and questions from the meeting were used to help identify preferred options that could best meet community needs. The feedback received about short-term rentals and the ability to operate them in Wichita was diverse. There was general support for short-term rentals operating with the owner present. Responses for short-term rentals operating without the owner present ranged from don't allow, to require a Conditional Use or other opportunity for neighbor input. In general, there appeared to be overall support for licensing. Participants provided a wide range of thoughts on what amount of fees would be appropriate. Multiple participants expressed concerns about the impact that short-term rentals would have on quality of life. Multiple participants also indicated that enforcement is important and had questions about how enforcement is done by the city.
- On October 25, 2022, the City Council received a presentation on potential regulation changes and licensing during the City Council workshop.
- On November 3, 2022, the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) Advance Plans Committee received a presentation on potential regulation changes and licensing.
- On October 25, 2022, the City Council received a presentation on potential regulation changes and licensing during the City Council workshop.
- On November 3, 2022, the Wichita-Sedgwick County Metropolitan Area Planning Commission (MAPC) Advance Plans Committee received a presentation on potential regulation changes and licensing.
- On December 5, 2023, DAB I received a presentation on short-term rentals and potential regulation changes.
- On December 7, 2023, DAB III received a presentation on short-term rentals and potential regulation changes.
- On December 12, 2022, DAB II received a presentation on short-term rentals and potential regulation changes.
- On January 4th, 2023, DAB V received a presentation on short-term rentals and potential regulation changes.
- On January 9th, 2023, DAB VI received a presentation on short-term rentals and potential regulation changes.
- On February 6th, 2023, DAB IV received a presentation on short-term rentals and potential regulation changes.

- On February 14, 2023, the Realtors of South Central Kanas received a presentation on short term rentals and potential regulation changes.
 - On March 9, 2023, the MAPC Advance Plans Committee received a presentation on the proposed short term rental regulation changes and approved a motion to recommend moving it on to the full MAPC and initiating the staff recommended actions to recommend that the full MAPC:
 - initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.
 - approve the proposed Unified Zoning Code amendments;
 - endorse the Wichita Municipal Code changes; and
 - amend the MAPC Policy 20.
 - On March 23, 2023, the MAPC approved setting the hearing date for April 13, 2023 to consider the proposed amendments to the Unified Zoning Code.
 - On April 13, 2023, the Wichita-Sedgwick County Metropolitan Planning Commission received a presentation on proposed regulation changes related to short term rentals in Wichita and held a public hearing. Multiple members of the public provided comments. The Planning Commission voted to defer the item so that the MAPC Advance Plans Committee can consider the proposed regulation changes at their May 11, 2023, meeting.
 - On May 11, 2023, the MAPC Advance Plans Committee received two presentations on the proposed short term rentals regulation changes – one on the proposed changes to the Unified Zoning Code and MAPC policy; and the other on the nuisance party house ordinance and the licensing ordinance. The Committee voted to recommend that the MAPC approve the proposed changes.
 - On May 11, 2023, the Wichita-Sedgwick County Metropolitan Area Planning Commission received a presentation on the proposed short term rental regulatory changes and voted (7-5) to:
 - initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.;
 - approve the proposed Unified Zoning Code amendments;
 - recommend that the governing bodies adopt the proposed Unified Zoning Code amendments;
 - amend MAPC Policy 20; and
 - recommend that the City Council approve the proposed Municipal Code changes.
- Multiple members of the public commented on this item - some in support and some with concerns.

Existing Conditions, Regulations, Enforcement, and Other Communities

Existing Conditions

The count of short-term rentals operating in Wichita varies depending on the source. Below is a table with estimates by one company. The same company has indicated that the average nightly rate is approximately \$90, not including the cleaning fees.

Year	Count of Short-Term Rentals in Wichita
2022	475
2021	420
2018	219

The location of short-term rentals varies, with some clusters appearing near downtown, Douglas and Oliver, and along Kellogg/US-54. It is estimated that approximately 90% of the short-term rentals in Wichita are single-family homes.

Existing Regulations

In the City of Wichita, Short Term Rentals are regulated by the Unified Zoning Code. The Unified Zoning Code does not specifically identify, or define Short Term Rental as a land use. However, the Unified Zoning Code does include a number of definitions that regulate where and how long dwelling units can be leased in the City. Based on the Unified Zoning Code, there are generally three options for how a Short-Term Rental can be legally operated in the City (and unincorporated Sedgwick County).

Option A: Onsite Owner or Manager

1. If the owner or a manager is residing at the location, then the short-term rental would meet the definition of a Bed and Breakfast (see definition below).
2. Bed and Breakfasts are a permitted or conditional use in many districts (including RR where they are a by-right permitted use).

Option B: Without Onsite Owner or Manager and Shorter than 7-Days

1. If the owner or a manager is not onsite AND the rental is for fewer than 7 days, then it would be under the Unified Zoning Code definition of Hotel or Motel (see definition below).
2. The Hotel / Motel is only permitted in the following districts (see table below).
 - GO General Office
 - LC Local Commercial
 - GC General Commercial
 - CBD Central Business District
 - LI Limited Industrial
 - GI General Industrial
 - AFB Air Force Base

Option C: Without Onsite Owner or Manager and At-Least 7-Days

1. If the owner or a manager is not onsite AND the rental is for at-least 7 days, AND there are no more than 5 unrelated people at rental - then there is no distinction of the short-term rental

from typical monthly rentals and no special provisions in the Unified Zoning Code apply.

Existing Enforcement

Monitoring and enforcement of Short-Term Rentals is generally led and coordinated by the Planning Department, Zoning Enforcement Division. Reports or complaints can be submitted in a variety of formats (i.e. email, phone, or online using the MABCD portal). The Zoning Enforcement Division generally operates 8 am – 5pm Monday through Friday, unless enforcement actions are specifically scheduled for a different time. Depending on the severity and the timing of the issue, complaints/issues can also be made to the Police Department. The Police Department can disperse individuals and issue citations as needed. Depending on the issue, other departments – including the Metropolitan Area Building and Construction Department or Fire Department could be contacted.

Other Communities

In 2022, Planning Department staff reviewed 25 cities in Kansas and other states to see if and how they regulate Short Term Rentals. Cities evaluated included Lawrence, KS, Manhattan, KS, Springfield, MO, Oklahoma City, OK, Des Moines, IA and Albuquerque, NM. Of the communities reviewed, 16 communities had regulations, while nine (9) communities surveyed either have no regulations or are reviewing their options at this time. The number of requirements placed on Short Term Rentals varied significantly by community.

Proposed Unified Zoning Code Changes – April 17, 2023

ARTICLE II-B.:

2.e. Bed and Breakfast Inn means the use of an owner-occupied or manager occupied residential Structure to provide rooms for temporary lodging or lodging and meals for not more than 15 Transient Guests on a paying basis. See Transient Guest. In the City of Wichita only, a Bed and Breakfast Inn shall be considered a Short Term Rental in the City.

5.i. Group Residence means a residential facility providing cooking, sleeping and sanitary accommodations for a group of people, not defined as a Family, ~~on a weekly or longer basis~~ or Transient Guests. Typical uses include fraternity or sorority houses, dormitories, residence halls, boarding or lodging houses, children's homes, and emergency shelters for the homeless and for victims of crime, abuse or neglect. The term Group Residence does not include Group Homes, ~~or Correctional Placement Residences,~~ or Short Term Rental in the City.

6.g. Hotel or Motel means an establishment used, maintained or advertised as a place where sleeping accommodations are supplied for short term use by Transient Guests, ~~usually for less than a week,~~ in which rooms are furnished for the accommodation of such Transient Guests, which may have as an Accessory Use one or more dining rooms, and may include individual kitchen facilities. Typical uses include Hotels, Motels, tourist courts and emergency shelters for the homeless and for victims of crime, abuse or neglect. The term Hotel or Motel does not include Short Term Rental in the City

12.g. Short Term Rental in the City means the use of a residential Dwelling Unit or Structure to provide room(s) for temporary lodging or lodging and meals for Transient Guests on a paying basis. The residential Dwelling Unit or Structure may be owner or manager occupied. The term Short Term Rental in the City also includes Bed and Breakfast Inn.

13.f. Transient Guest means in the City, a person who occupies a room(s) for a period of not more than 28 days at a time (consecutive days). In the County, it means a person who occupies a room(s) for a period of less than one week at a time.

ARTICLE III-B.:

Corresponding appropriate changes to the District Regulations.

ARTICLE III-D.:

Corresponding appropriate changes to the Use Regulations Schedule (Matrix).

6.g.(3) A Wireless Communication Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. V-L ~~VI-G.9 and Sec. VI-H.5~~, if it conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. I-L.:

6. qq. Short Term Rental in the City. Although listed as permitted Uses in some Districts, Short Term Rental in the City shall always be considered an Administrative Permit and subject to Sec. V-L (Administrative Permit review procedures) or a Conditional Use and subject to Sec. V-D (Conditional Use review procedures) when non-owner occupied and located in the SF-10, SF-5, TF-3, MF-18 and MF-29 Districts. A non-owner occupied Short Term Rental in the City shall be permitted in all other Districts where listed as a permitted Use. An owner occupied Short Term Rental in the City shall be a permitted where listed as a permitted Use. Whether allowed by-right, by Administrative Permit approval, or by Conditional Use approval, a Short Term Rental in the City shall be subject to the following standards. For the purposes of this Section, owner occupied shall mean any Dwelling Unit in which the owner resides and which is the owner's primary place of residence. In order to be considered to be owner-occupied, the owner must be onsite during the period of time the unit(s) is rented as a Short Term Rental.

- (1) Permitted only in residential Dwelling Units and permitted Accessory Apartments.
- (2) May be permitted as either a Primary Use or an Accessory Use
- (3) Not permitted to be in any Recreational Vehicle.
- (4) Must be licensed and operated in accordance with the requirements of Chapter 3.40 of the Code of the City of Wichita.
- (5) Must be in compliance at all times with all applicable zoning, building, fire and life-safety, housing and health codes.
- (6) Must not exceed the posted capacity permitted in accordance with Chapter 3.40 of the Code of the City of Wichita.

ARTICLE V.:

V. Development Review Procedures

A. GENERAL

5. Standing to appeal. The following persons shall have the standing to appeal a matter under this Code, except for a matter involving a Short Term Rental in the City: the applicant; the Planning Director; the Zoning Administrator; the Planning Commission; the Governing Body; any owner of land directly affected by the action or proposed action; any owner of land within 200 feet of the property in question in the City and within 1,000 feet of the property in question in the County; if the matter is partly or wholly within the Urban Area of Influence of a second or third class city in the County, by the Planning Commission or municipal government of that city; or by any other person determined by either the body taking the final, non-appellate, action or by the appellate body to be actually or potentially aggrieved by the action or proposed action. For a matter involving a Short Term Rental in the City, the following

persons shall have the standing to appeal the action of the Planning Director: the applicant, the Zoning Administrator, the Planning Commission, the Governing Body, and all owners of record of land directly affected by the action and which Abut and are Contiguous to the application area, irrespective of streets or alleys.

L. ADMINISTRATIVE PERMITS

The intent and purpose of this section is to allow for administrative action, and set out the required review procedures for Administrative Permits.

- 1. Authority.** The Planning Director, with the concurrence of the Zoning Administrator shall have the authority to approve applications for Administrative Permits.
- 2. Types of Administrative Permits Allowed.** The following Administrative Permits are allowed, when required by this Code.
 - a.** Wireless Communication Facility, subject to Sec. III-D.6.g
 - b.** Short Term Rental in the City (STR), subject to Sec. III-D.6.qq??
- 3. Initiation.** An application for an Administrative Permit may be proposed by the owner(s) or the authorized representative of the owner(s) of the subject property. If the property is located within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a. for a Wireless Communication Facility, or Sec. V-C.14, excluding the requirement of V-C.14.a. for a Wireless Communication Facility, as applicable.
- 4. Application.** A complete application for an Administrative Permit shall be submitted to the Planning Department in a form established by the Planning Department along with a nonrefundable fee that has been established by the Governing Body to defray the cost of processing the application. No application shall be processed until the

application is complete and the required fee has been paid. Applications shall include a site plan that clearly delineates the location and characteristics of the proposed use.

- 5. Notices.** The provisions of this section describe the various types of notices that may be required. The actual type of notice required for a given application is specified below. ~~in the relevant section of this article.~~

a. **Written notice.**

1. For a Wireless Communication Facility application, a sign shall be posted on the property for the specified time as required by Planning Commission policy.
2. For a Short Term Rental in the City, written notification stating the nature of the proposed use shall be mailed to all owners of record of land which Abut and are Contiguous to the application area.

- 6. Action by the Planning Director.** The Planning Director shall approve the application for an Administrative Permit unless the request would violate the provisions of Sec. V-L.7. The Planning Director may impose special conditions of approval on the Administrative Permit, including but not limited to time limitations, access limitations, design or architectural modifications, Screening, Landscaping, Parking, and other controls to prevent damage or mitigate adverse impacts to adjacent properties or safeguard public interests.

- 7. Administrative Permit Criteria.** The Planning Director shall not approve an Administrative Permit if the Planning Director finds that the proposed development:

- a. is a Wireless Communication Facility that does not conform to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, is not designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" of Sec. A-2, and that does not meet the

requirements of Sec. III-D.6.g.;

- b. is a Short Term Rental in the City that does not meet the requirements of Sec. III-D.6.qq.??;
- c. is a Short Term Rental in the City and more than 50% of all owners of record of land which Abut and are Contiguous to the application area, as specified above, file a written protest petition;
- d. would adversely affect the safety and convenience of vehicular and pedestrian circulation in the vicinity of the subject tract, including traffic reasonably expected to be generated by the proposed Use and other Uses in the area given the existing zoning, existing land Uses, and proposed land Uses in the area;
- e. creates more adverse impacts on existing Uses in surrounding areas than might reasonably result from Development of the Site in strict compliance with applicable standards;
- f. would not be compatible with existing or permitted Uses on Abutting Sites, in terms of Building Height, Setbacks and Open Spaces, bulk and scale, Landscaping, Parking or circulation features; or
- g. will be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity for reasons specifically articulated by the Planning Director.

The applicant shall have the burden of demonstrating that the proposal meets the applicable review criteria.

8. Notice of decision. The Planning Director shall, within ~~two~~ three business days of making a decision, give notice of such decision to the applicant, to the Zoning Administrator, and to any other person reasonably requesting such notice. The Planning Director's decision shall be considered ~~approved~~ confirmed as submitted if the Zoning Administrator has not responded within ten days of the date of transmission, unless the review period is extended by action of the applicant.

9. Appeal of the Planning Director's decision. For the purposes of this Section, any

person shall have the standing to appeal the action of the Planning Director, as specified in Sec. V-A.5. When an application for an Administrative Permit has been denied, or when such application has been approved with conditions or modifications that are unacceptable to the applicant, the applicant may file an application for Conditional Use approval with the Planning Commission pursuant to Sec. V-D and the filing fee for the Administrative Permit shall be applied toward the filing fee for the Conditional Use approval. When an application for an Administrative Permit, except for a Short Term Rental in the City, has been approved, with or without conditions, and a person with standing to appeal as specified in Sec V-A.5 has filed a written protest petition, the application shall be forwarded to the Planning Commission for Conditional Use approval pursuant to Sec. V-D. When an application for a Short Term Rental in the City has been approved, with or without conditions, and a person with standing to appeal as specified in Sec V-A.5, except for all owners of record of land which Abut and are Contiguous to the application area, file a written protest petition, the application shall be forwarded to the Planning Commission for Conditional Use approval pursuant to Sec. V-D. If more than 50% of all owners of record of land which Abut and are Contiguous to the application area, as specified above, file a written protest petition, the application shall be forwarded to the Planning Commission for Conditional Use approval pursuant to Sec. V-D. Any appeal provided for in this Section must be filed within 14 days of the date of the decision.

If the application area is located within a CUP or P-O, the application for Conditional Use approval shall also be considered as an application for an amendment to the CUP or P-O as outlined in Sec. V-E.13, or Sec. V-C.13, as applicable.

10. Appeal of the Planning Commission's decision. Any person as specified in Sec. V.L.9 dissatisfied with the decision of the Planning Commission may appeal to the Governing Body. Any such appeal must be filed within 14 days of the date of the final decision.

11. Appeals of final action. The Governing Body's decision on an application for

Conditional Use, CUP or P-O approval, as applicable, shall be the final local action.

Appeals of such final local action shall be taken to the district court in and for the Eighteenth Judicial District of the State of Kansas. Any such appeal must be filed within 30 days of the date of the final decision.

ARTICLE VI.:

VI. Decision Makers

VI-G. Planning Director

9. Administrative Permits. The Planning Director, with the concurrence of the

Zoning Administrator, shall have the authority to approve, approve with conditions or modifications, or deny applications for Administrative Permits pursuant to Sec. V-L. The Planning Director's decision on such an application may be appealed by filing an application for a Conditional Use pursuant to Sec. V-D. If the application area is located within a CUP or P-O, the application for Conditional Use approval shall also be considered as an application for an amendment to the CUP or P-O as outlined in Sec. V-E.13, or Sec. V-C.13, as applicable.

VI-H. Zoning Administrator

5. Administrative Permits. The Zoning Administrator shall have the authority to review and recommend to the Planning Director approval, approval with conditions or modifications, or denial of applications for Administrative Permits pursuant to Sec. V-L. Administrative Permits may be granted by the Planning Director only with the concurrence of the Zoning Administrator.

ARTICLE II. (Reference):

B. – DEFINITIONS

1. Letter "A"

a. Abut means touching, adjoining or Contiguous; as distinguished from lying near to or Adjacent.

e. Adjacent means lying near or close to, neighboring, but not necessarily touching or Contiguous. For purposes of this Code, Adjacent is used in the context of nearby but not touching.

f. Adjoin. See "Abut."

3. Letter "C"

o. Contiguous means touching along boundaries, adjoining, bordering, or next to but not necessarily touching, but with nothing similar intervening.



MEMORANDUM

TO: Wichita-Sedgwick County Metropolitan Area Planning Commission

FROM: Scott Wadle, Planning Director

SUBJECT: Short-Term Rentals – Proposed UZC Administrative Permit Protest Examples

DATE: April 7, 2023

Purpose:

This document provides an overview of how the proposed April 2023 Unified Zoning Code changes related to short term rentals owner notification and protest process would function.

Background:

- The April 2023 draft Unified Zoning Code related to short term rentals would require mailed notices to be sent to the owners of all properties that are immediately abutting and contiguous to the application site. In many scenarios this would result in 4 to 8 property owners receiving the notifications.
- The notices would provide information about what is being requested and provide information on the protest process. The property owners would have 14 days (from the date on the notice) to submit a protest to the City Clerk.
- If the amount of valid protest petitions represents more than 50% of the owners of record of properties abutting and adjacent to the subject site, then the short-term rental application would require a Conditional Use case.

Questions

- What happens if a property owner owns more than one property that is adjacent and abutting a short-term rental application site?

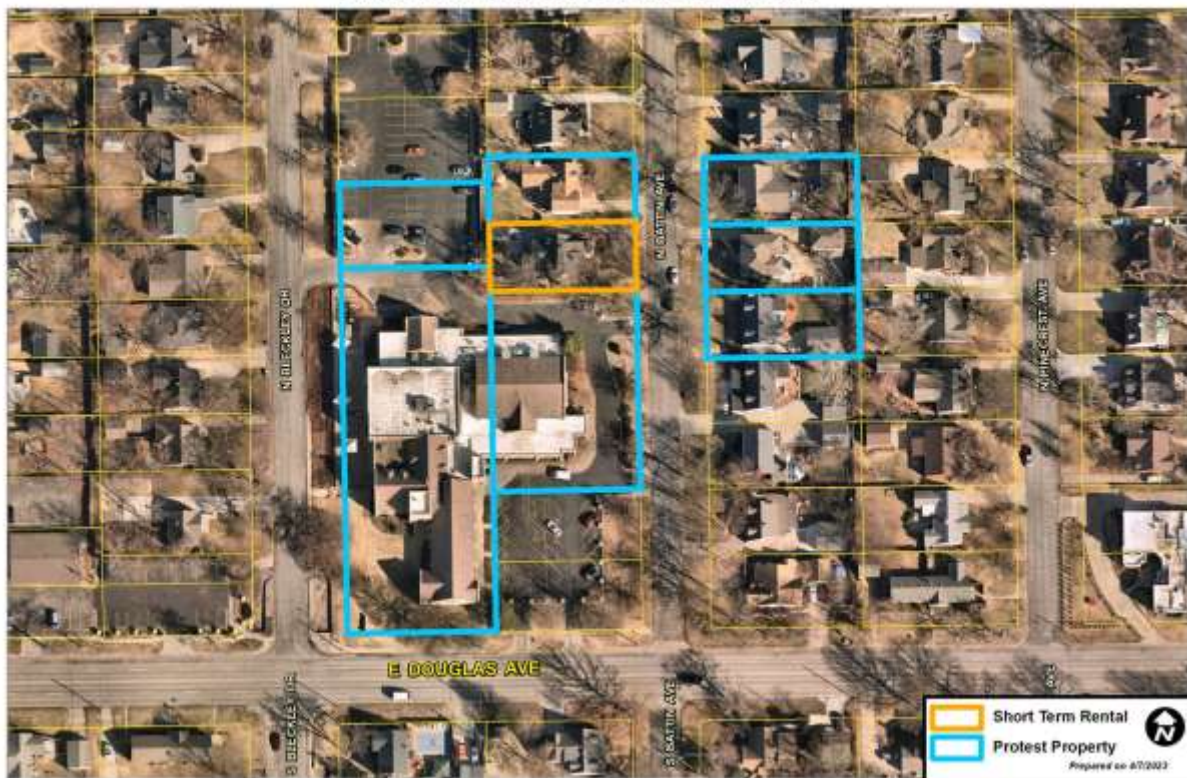
- The owner counts as one owner.
- What happens if one of the adjacent and abutting properties is substantially larger than all the other adjacent and abutting properties?
 - The owner of the larger property counts as one owner.
- What is the definition of land or property as used for the Unified Zoning Code Administrative Permits process for short term rentals, does it mean parcels or tracts?
 - It means either, because the number of owners is what counts towards the 50% threshold.
- Do renters get notified of the application?
 - No, the notice would be sent to the owners of record of the property.



Short-Term Rentals and Protest Properties



Short-Term Rentals and Protest Properties



Short Term Rentals – Public Comments

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April 2022

Email Comments

- "I can appreciate the city and county's stance on the residential building code, but not when the stance is so lax on short-term rental facilities run by private individuals. How are we supporting local businesses that run hotels and similar properties when we force them to adhere to higher standards and incur more expense than this newfound competition?"
- "If we allow people to use their homes as hotels, how can we deny someone else the right to use their garage as an automotive shop, welding shop, or other light commercial usages? How do we deny someone the ability to run any type of business out of their home? Where do we draw the line and who gets to make that choice?"
- What is your response to the fact that multiple studies have reported a significant rise in residential rents (as high as 40%) following an increase in short-term rental demands? How do you feel we can mitigate the impact that this will have on any renters, particularly those that face significant financial challenges, already.
- In light of the recent rapid inflation, rise in interest rates, the sharp increase in housing prices, and the lack of inventory are you at all concerned that the increase in Airbnbs could be a significant contributing factor to an affordable housing crisis for lower-income families and individuals in Wichita?
- Given the difficulty of large cities with deep resources, such as New York, Paris, and, Los Angeles, to do anything about illegal Airbnb operations how do you feel that the city is going to be able to control the illegal operations of home-sharing companies by charging a nominal annual fee and hiring a third party to police their activities? Several of these larger communities have attempted the same course of action with little to no success.
- How do you reconcile the significantly more stringent building codes for commercial properties and residential "multi-family" properties with the fact that commercial lodging operations are being allowed in homes that in many cases would not meet current building codes today?
- Why have varied zoning for different neighborhoods at all? Do you feel that residential neighborhoods exist as a place for people to live, or are they a place for people to run businesses and make money?
- I understand that the Summerfield neighborhood, an HOA community, is in an eminent legal battle with an Airbnb operating illegally in their neighborhood. The Airbnb owner is apparently an LLC from outside of Wichita and has told them that they have no plans to make any changes and they are welcome to sue if they like. Given that more and more of these home-sharing operations are owned and operated by legal entities both local and from out of town, is the city prepared to pursue lawsuits and legal action against violators at a higher level if more homes sharing-friendly ordinances are put into place?

I would like to thank each of you for the opportunity last night to review and discuss the proposed changes to the city code as it relates to home-sharing platforms such as Airbnb and VRBO. I appreciate the work and time you have devoted to this already.

I felt somewhat unprepared last night, as I was very surprised by the direction that has been taken to this point. The vast majority of people and neighbors that I have discussed this matter with have been of a similar opinion as me in that the operation of home-sharing businesses should be at least as limited as they are today, if not more so, and the codes more stringently enforced. I felt that this was also the clear consensus of the vast majority of a large group of people that attended the neighborhood meeting the day after the murder at the Airbnb property on North Batten. I realize that my experience is by no means a scientific sampling and that my own confirmation bias certainly impacts my experiences and interactions with others, but I was surprised nonetheless.

Setting my personal feelings and experiences aside research has shown that home-sharing platforms like Airbnb repeatedly have negative impacts on the quality of life for "local" people who live near them. Multiple studies have reported a rise in rental prices for locals looking for long-term accommodations, in part because landlords can make significantly more money on short-term rentals than they can on long-term leases. In some places, residential rents have risen by as much as 40% following a sharp increase in short-term rental demands. The sense of community in family-oriented neighborhoods is damaged by an influx of short-term visitors that have no vested interest in the neighborhood or those who live there.

Consider the following:

- A 2014 report released by the New York State Attorneys General's office revealed that 72% of Airbnb reservations made in New York City were illegal. Local laws in New York make it illegal to rent an entire apartment on Airbnb for less than 30 days – to keep the long-term supply of property available to locals. Despite this New York City remains one of Airbnb's biggest markets where illegal listings under 30 days are available to tourists.

The following statement was issued by NYC Council members Helen Rosenthal and Jumaane Williams, "Airbnb consistently undermines the City's efforts to preserve affordable housing, and regularly attempts to thwart regulations put in place to protect New York City Residents."

- In 2016 the city of Barcelona fined Airbnb 600,000 euros for refusing to adhere to local laws by continuing to advertise unlicensed properties. As a result, they have had to employ a team of inspectors who wander the streets searching for illegal rentals.

"Barcelona exists for its people. The priority is it's a place to live." – Janet Sanz, Barcelona Housing Councillor.

- A Los Angeles study indicated that, in 2014, almost half of Airbnb listings were clustered in seven neighborhoods, where rents increased a third more quickly than the city average. the report also suggests that Airbnb profits from illegal rentals that "cause rent increases, reduce the housing supply, and exacerbate segregation."
- Another study interviewed a small group of residents on the Hawaiian island of Oahu about their perceptions of short-term rentals. It identified both positive and negative effects - but

more of the latter. People were most worried about the sense of community being damaged, with this referenced more than twice as frequently as property values and affordability.

"This thing is changing the sense of place of the neighborhood. It's changing the feel of it, with almost a revolving door of strangers," one resident said.

- 44% of advertised properties on Airbnb in Paris, France were permanently available for rental, despite laws that holiday rentals are capped at only being available for 120 days of the year.

These are just a few examples as there are similar stories in communities of all sizes around the world and throughout the United States.

Consistent standards and regulations are lacking across Airbnb and other home-sharing rentals as they are private properties and not subject to the building codes and standards, ADA codes, fire suppression, etc. that are required in commercial short-term rental facilities. I would think that the city would be very concerned about these matters.

Previously, I was employed by a local commercial contractor. We were engaged to build a new residence for the Monks of the Lao Buddhist Temple, located on South Greenwich road in a somewhat rural area of Sedgwick County. The Monks were living in a very small run-down residential property. Monks live together in a communal way that is most easily described as familial. As a commercial contractor we were heavily scrutinized and unable to build the facility as the monks originally envisioned because the housing code did not allow for more than five non-family members to live in a residentially zoned property. Even though only five Monks were residing together, they wished to build the facility to accommodate visiting Monks for short-term stays. We were unable to build the facility to accommodate this request because we were told the structure would have to be built to meet commercial housing codes, meaning things such as a fire suppression system, ADA accessibility, commercial fire alarm systems, commercial-grade electrical systems, etc. All of these requirements would have driven the cost of the project up by more than 20%. The Buddhist Temple was unable to afford the increase as it would have been nearly \$200,000 more.

This kind of discrepancy seems ludicrous to me. I can appreciate the city and county's stance on the residential building code, but not when the stance is so lax on short-term rental facilities run by private individuals. How are we supporting local businesses that run hotels and similar properties when we force them to adhere to higher standards and incur more expense than this newfound competition?

We own a second home in a rural area. One of the stipulations of our insurance policy is that home-sharing, such as Airbnb, is not allowed. Most, if not all, of the affordable policies that we reviewed carried that same stipulation. We had no desire to turn our second home into an Airbnb, but when I asked my agent about it he told me that many insurance providers are now taking that stance. Why? Because insurance companies believe that homes largely dedicated to home-sharing are greater targets of burglaries and vandalism because criminals can scope them out online and then determine when they are vacant. They often tend to be subject to more abuse and damage, which often goes unnoticed for long periods. He stated that there has been a rise in claims nationwide on homes used for home-sharing.

When we travel we make every attempt to be the invisible tourist so we have never used any home-sharing platforms for our accommodations. We want to support locals of the places we visit, not make

their lives more difficult. As I stated in the meeting last night, we lived next door to an Airbnb for a while. The people that own the home are wonderful and while we never experienced any crime we were subject to several uncomfortable situations. When you see strangers carrying items in and out of your neighbor's home when they are not home it's hard to know whether to be alarmed or not. When you suddenly have random people you have never seen in your life stroll down your driveway and into your back yard to say hello it is always initially concerning, no matter how friendly they may turn out to be.

I certainly don't want to infringe on the freedoms of my neighbors, but I don't want them to infringe upon mine either. It's a complicated issue but, there is a reason why we have historically separated districts that are zoned residential from those that zone commercial. If we allow people to use their homes as hotels, how can we deny someone else the right to use their garage as an automotive shop, welding shop, or other light commercial usages? How do we deny someone the ability to run any type of business out of their home? Where do we draw the line and who gets to make that choice?

While I realize that the murder at the Airbnb on North Battin is not a typical incident I encourage you to consider the damage that has already been done to many people that live in the immediate vicinity. The individual and community trauma that arises from events such as this can have long-term impacts on an individual and a collective group's mental and physical health. That has been the case in our community. In simple terms, for many, the damage has already been done. Multiple homes and cars were struck by gunfire. Cars were racing in every direction, including the wrong way on one-way streets. Neighbors found rolls of cash and discarded firearms in their yards. No neighborhood should be subject to this sort of activity and as a community, we should take every step possible to eliminate the possibility of such things. This incident has already proven to many of us that it absolutely can happen and although it is unlikely to happen again, encouraging more Airbnb properties in our City's neighborhoods will certainly increase the likelihood that it might.

Finally, I encourage you to read this recent paper on the economic costs and benefits of Airbnb by Josh Bivens, for the Economic Policy Institute. The final sentence of the very lengthy report states, "As this report shows, there is little evidence that the net benefit of accelerated Airbnb expansion is large enough to justify overturning previous considerations that led to the regulatory status quo—in fact, the costs of further Airbnb expansion seem likely to be at least as large, if not larger, than the benefits."

<https://www.epi.org/publication/the-economic-costs-and-benefits-of-airbnb-no-reason-for-local-policy-makers-to-let-airbnb-bypass-tax-or-regulatory-obligations/>

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October 2022

Wichita City Council Workshop – October 25, 2022

City Council Workshop

M- That is one person per block but the one person/business could own many of them? Essentially someone could come in and corner the market if they wanted. Seems very reminiscent of the discussions of how we do liquor licensing. It is how have one person per family can own a license so someone can't come in and corner the entire market. Has any thought gone into this, what if someone buys property every few blocks, signs it up as a short term rental. Now that person has created value and licensing and now they can sell that license to someone else within that 600 foot zone. So pretty much if I put my house that is being prepared for a family member on the market as a short term be-n-breakfast , even if it is not, and someone else wants to utilize a bed-n-breakfast within that area, they could pay me to take mine off that list? We have created some sort of trade here.

SW-Shared how they landed on the 600 ft. and it could be adjusted if needed.

CM-Are there any examples of this clustering now. Such as are there are some already within 600ft. or is it a fear? Answered by SW

How many STR's did you say we had in the city? Answered by SW

CM-Does this include all of the options, the ones with 7 days with the owner present, not present, etc? Answered by SW

CM-Is there a process set up if someone down the block has a room above the garage they are renting out, is there a process to apply for an exemption? Answered by SW

CM-How was the 250K insurance decided upon? SW Deferred to Legal whom answered.

CM-Can you better explain insurance, I'm sure it is not for the dwelling? Answered by Legal CM-so specifically liability? Answered by legal

CM-Is it protection from the person renting it? Answered by Legal

CM-Is it meant for a 24/7 monitoring to provide feedback from residents? Answered by SW

CM-Would someone physically be there to answer the phone 24/7 or would it be automated response letting the caller know they will get back with them during business hours? SW will get back with an answer

CM-Can we go through incidents/issues are we seeing right now? Answered by SW

CM-What kind of calls to police for SRT? Parties, theft around these areas., What kind of impact is it making on the neighborhood, trying to see why these are a bad element? SW will get back with an answer

CM-Are SRT illegal or what makes them out of compliance with the zone?

CM-Are we wanting to be more restrictive? Answered by SW

CM-What kind of fines are there for those that violate the ordinance? Stated he didn't understand the ordinance. Can you give me examples of violations? Answered by SW

CM-We don't know who is listing or renting out on a website, there seems to be some discrepancy? Will this help with that? Are we going to take away so it doesn't have to be 7 nights? Where did the number of 7 come from? Answered by SW

M-How many complaints have we had from Air BnB over the last 2 years? Answered by SW

M-Is there data we can look at on these 50-60 complaints over the last 2 years? Are they all over the city or there particular areas? SW will get back with an answer

M-Are there areas that are more resistant to Air BnB's, like Corwn Heights? Answered by SW City Manager followed up with an answer as well.

CM-Were there no laws on the books we could exercise against them? City Manager answered

CM-Of the 50-60 cases/complaints, how many were from the same property? SW will get back with an answer

CM-Since it is 600 ft. would it be fair for the person to put one in that area, no one else would be able to put one in there? It is more than 1 block according to the map.

CM-How much is the proposed licensing fee? Answered by SW but still need to determine what the fee will be.

CM-When someone applies for the Conditional Use, what is the notification area? Would it also still follow the petition process? Answered by SW

CM-Regarding the short term rentals, they already have the Conditional Use approved and wouldn't have to go through this process? Answered by SW

CM-Someone that has been operating for some time and had no complaints would have to apply and could have petitions against and be denied? Answered by SW

CM-Is there any distinguishes between and individual versus a corporate model where they are wanting to by several houses for STR? Answered by SW, there is no current distinction between the two

CM-When will this go to DAB? Answered by SW, but it is not currently on the DAB calendar

December 2022

District Advisory Board I – 12/5/2022

New Business

9. Short-Term Rentals

Metropolitan Area Planning Department Director Scott Wadle presented on existing regulations for short-term rentals in Wichita and potential regulation changes and licensing.

DAB members and community members asked questions and made comments regarding existing regulations and proposed regulations and licensing.

Q (DAB): Are there hotels that are subject to any special taxes.

A (Staff): I would like to have conversation with Visit Wichita to see if they have seen a decrease usage of hotels.

Q (DAB): I was wondering why B-multifamily is not included.

A (Staff): B-multifamily is already so intense that short-term rentals will not have that much of an impact.

Q(DAB): I hate to criminalize families that are having gatherings at their home when there are 20-30 individuals invited.

Q(DAB): How do short-term rentals affect the affordability and availability of affordable housing?

A (Staff): We are looking into that.

C (DAB): The 600 feet may not be realistic.

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C (Staff): The intent is to grandfather the homes that are currently operating with short-term rentals.

C (Public): In regard to how short terms affects rental stock. In other cities, because of all the short-term rentals, it is very difficult to find a place to live.

Q (Public): Does the party house ordinance, does it only pertain to those that own a short-term rental or everyone?

A (Staff): It would apply broadly to everyone.

C (Public): Some of these regulations should pertain to rental properties as well. There needs to be more accountability and traceability on rentals as well. Rental properties should be registered and assured just like short-term rentals.

C (Public): The general community of short-term rental owners are not opposed to some type of registration.

Q (Public): How would the distance regulations work for an apartment building.

A (Staff): Staff would need to further discuss that as well as regulations when it comes to a duplex.

Q (Public): As owners of short-term rental, we would like to work with the city to identify the best way to regulate short-term rentals. I would suggest you re-evaluate the 600 ft rule.

C (Public): Are you reducing concerns of violence with these regulations? How long will homeowners be waiting for inspections?

District Advisory Board III– 12/7/2022

9. Short Term Rentals

Scott Wadle, Planning Director presented on existing short term rental regulations as well as new potential short term rental regulations and licensing for the City of Wichita.

DAB asked questions and made comments about communicating changes to the public, lack of ADA compliance, lack of cap on children, lack of knowledge about expectations or restrictions, the history of short term rentals, violence and destruction in Wichita short term rentals, room rentals versus short term rentals, the potential for abuse from scammers, building regulations and codes enforcement, impact on property values, out of state short term rental owners, and the need for a mechanism to prevent several short term rentals in a small area as well as notification of surrounding property owners of a short term rental being near their homes.

Members of the public asked questions and made comments about short term rental owners being against parties and disruptions to their neighbors, the need for regulations, opposition to the 600-foot rule, the high demand for short term rentals currently in Wichita, length of time for getting properties inspected, the excitement to be able to use owned properties for short term rentals, self-regulation from the apps, and the amount of work and money put into creating a good short term rental.

Action Taken: Provided feedback.

District Advisory Board II – 12/12/2022

10. Short Term Rentals Policy and Regulations Update

Metropolitan Area Planning Department staff presented on existing short term rental regulations as well as new potential short term rental regulations and licensing for the City of Wichita.

Q (DAB): All of these people are breaking the law?

Q (DAB): What problem are we addressing with this?

A: We've heard some feedback that the issue is there is a concentration of short term rentals in certain neighborhoods and there is a concern about safety. We're also hearing from people who operate them, they are convenient and entrepreneurial. Are these appropriate for Wichita and what should be fair regulation of them?

Q (DAB): Why doesn't Crown Heights fix this problem on their own with an HOA?

A: That is very much part of the discussion that is happening city-wide.

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C (DAB): Instead of trying to stifle entrepreneurship and create ordinances city-wide, maybe the neighborhood can handle their own internal problem.

A: During our workshop, that discussion came up as well.

C (DAB): It also depends on what people consider entrepreneurial or predatory.

Q (DAB): I'm shocked by the numbers here. I did not realize this was such a lucrative business here. What is driving that?

A: I can speculate. Part of it is the ability to do it. Less than if you were building a hotel. There's a market for it.

C (DAB): One of the first advisory board meetings I was at, there was an Airbnb near my home and there was a complaint about parking. I know this does affect D2 residents. We have had at least one incident that has come across our advisory board since I was a board member.

C (DAB): Some of the Airbnbs I've used had a requirement that the operator lives and stays on site. When I stayed there, the operator was in a guest house or in an RV. That's another one to add to the list. Owner occupied at the time of the rental.

Q (DAB): Is the good neighbor policy something official?

A: No.

Q (DAB): If there is a noise violation, does that mean police are kicking people out at that time?

A: I don't know what that would look like at this time.

C (DAB): We have events that happen when there is a lot of need in a concentrated time, like Riverfest, basketball tournaments. That's not necessarily letting the market sort it out.

Q (DAB): Is this creating a whole new department?

Q (DAB): Are any cities pushing this down to an administrative level so that we're able to avoid the CUP process? A terrible thing to go through if you're not a planner or developer.

C (DAB): I'm hoping we take the time to process this out and not jump to something just to satisfy the noise. I see this as way too much regulation, but I know it's a growing industry and we have to address it in a way that's beneficial to all instead of just reacting to the noise in Crown Heights.

C (DAB): I don't want an ordinance or license without any teeth that people can just pay around it. I think we should do our due diligence to make sure we are solving the problem.

C (DAB): Given the glacial speed at which government works, I would support pushing it down from the planning department to an administrative level, if possible, and providing them the resources to make sure it's swift and has enforcement with permitting and licensing. That means there has to be rules that everyone can be comfortable with. If it doesn't work the first time, we can amend it or throw it out.

January 2023

District Advisory Board V – 1/4/2023

Short Term Rentals Policy and Regulations Update

Scott Wadle, Metropolitan Area Planning Department Director, presented on existing short term rental regulations as well as new potential short term rental regulations and licensing for the City of Wichita.

Q (DAB): 600 feet, why was that selected? Something from another community?

A: Based on typical block length for city of Wichita block.

Q (DAB): In Florida, HOA can override that. No one can rent for less than 30 days. Would HOA be able to do that in Wichita?

A: Yes, an HOA can be more restrictive, but enforcement is up to the HOA.

Q (DAB): Has there been any groups or individuals requesting this?

A: No, but I'm happy to share this presentation with any groups.

C (Public) Jennifer 120 S Bay Country Court. I Operate some Airbnb in City. Personal commentary. Crown Heights situation was unfortunate but was very rare. If running Airbnb like a true business, there's a way to prevent this from happening. I have a 2 night minimum. Have a higher rate that I charge. I screen people because I want to protect my neighbors beside me. I think majority are in favor of some regulations. A lot of confusion on how to implement procedures like conditional use permit. How can you push through 475 Airbnb in a short amount of time to keep us all running? And the 600 feet rule, there are a lot of us already operating, would we be grandfathered in? What about duplexes? Needs to be more hammered out. When do you anticipate regulations being put into place?

A: Something that has come up at other DABs. Capacity of staff to process 475 CUPs internally. 24 planning commission meetings in a given year. It would overwhelm the planning commission. One idea was administrative approval process. Exploring what other communities are doing. Another would limit it to licensing, but neighbors want to be able to provide input. On the distance, it would be anticipated existing units would be grandfathered in. Distance would apply to new units. And it would be based on parcel lines. The duplex scenario, we are talking with staff on that. Hoping to get it addressed in January. This hasn't made it to all DABs. Going to DAB 4 in February. We'll go to MAPC then. Maybe April/May would be next round of DABs and other groups. May take longer based on feedback. Because of the amount of changes that could take place, hard to speculate when it would be implemented and take effect, but there would be a significant amount of time to allow operators to learn about it and become compliant.

C (Public): We appreciate getting to have a say. We were told we aren't getting shut down, but now owners are getting cease and desist letters. There has to be some kind of pause until we get this figured out. Taking away our whole business. There are a lot of rules and regulations on Airbnb. The timing is a big concern right now. Can we put a pause on the cease and desist letters? Issue with the 600 foot rule. If you look at the map of where Airbnbs can go, there are only certain areas. And we can't publish where the existing ones are because we don't want to be targets of theft. So if someone wants to buy a house to be an Airbnb, then finds out after there is one in the area, how do we handle that? I don't know the answer, just wanted to bring it up. We appreciate getting the chance to have a say and think things through. Landlords don't have to jump through all these hoops. Why can a landlord have 30 properties and not have to jump through hoops and we're getting 20 citations for the less than 7 days?

A: Because that's the ordinance on the books right now. Airbnb has a strong 5-star rating we're all after. That's what keeps us in check. If we don't get those 5 stars, we won't get any business.

C (DAB): I use Airbnb and Vrbo a lot. We get rated too.

Q (Public): How are operators available 24-7?

A (Public): Anytime someone has an issue, they message us on Airbnb or VRBO and it comes to our phones. If we don't respond as fast as possible, we get dinged on the platform.

C (Public): The complaints I've heard from neighbors is if they have a problem and can't contact the operator, they don't like that. Customer can contact operator, but the neighbors can't.

A (Public): I've gone to neighbors and shook their hands and get to know them. I give them my number and ask them to contact me. I have cameras on the outside. I can watch and verify people are showing up. I try to watch traffic and you can see things happen late at night. I've had no issues.

C (Public): That's great, but not every operator does that. Neighbors need to have the ability to contact the operator.

Q (DAB): How are you going to contact the City at 2 in the morning to get someone out? Are they going to contact her (operator)?

C (Public): You could find the listing and message the host.

C (DAB): Or you could call the police.

Q (Public): If there's a continued problem and the neighbor wants to talk to the operator, how will they be able to contact them? Can there be a list with contact information that is available to the public? If they are operating as a business, you should be able to contact the business.

C (DAB): But you wouldn't want to publish that list and put their homes at risk.

C (Public): You can go onto Airbnb platform and contact the host that way too.

C (DAB): They are going to want to keep the house up and not have any problems.

C (Public): When you go into the business, you know you're kind of a landlord. We go into it knowing we're on call 24/7. It's our name on the property at the end of the day. We aren't taking it lightly. We don't want people to ransack our homes. And if someone tries to contact us in the middle of the night, if we don't answer them we're going to get bad reviews.

Q (Public): In the event you don't know if they're Airbb or VRBO, is there a platform you can find it?

A: Either one or the other, and most are on both.

C (Public): No one vacations in Wichita for more than 7 days.

C (Public): For our City, a lot of people said what are people coming to Wichita for? 90% families just wanting to get with families and make memories. Most precious thing faith and families. I want our city to be able to open the doors and let families do that. Crown Heights incident was very unfortunate, but that's not what's happening here.

District Advisory Board VI – 1/9/2023

8. Short Term Rentals

Scott Wadle, Senior Planner presented on existing short term rental regulations as well as new potential short term rental regulations and licensing for the City of Wichita.

DAB and members of the public asked and made the following summarized questions and comments:

Bill Washburn, DAB asked and commented about the enforcement of the proposed party house ordinance, the possibility of short term rental owners foregoing licensing, the penalties and fines for lack of licensure, and a recommendation for increased inspections similar to hotels/motels.

Javan Gonzalez, DAB asked and commented comments about the effect of short term rentals on long term rental pricing, short term rental occupancy rates, a recommendation to apply transient guest taxes to short term rentals, the cost of short term rentals compared to hotels, concerns about Wichita residents being priced out of their neighborhoods, a need for low-income rental and housing in Wichita, favor for licensing and spacing between short term rentals, clarification of the terms of grandfathering for current short term rentals with the proposed regulations.

Tom James, DAB asked and commented about departments that would be responsible for short term rental inspections and an example of short term rental ownership that would struggle under proposed licensing and regulations.

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Mark Baker, DAB asked and commented about the intrusiveness of regulations for short term rental operators who only offer short term rental sporadically and a feeling that regulations were solving a problem that does not currently exist.

Scott Lucas, DAB asked and commented about the current and projected economic development impact of short term rentals as well as determining activities and events that would drive utilization of the short term rental market and confirming the proposed party house nuisance ordinance would be for all properties in Wichita, not just short term rentals.

J Spacerwoman, Public asked why RVs were not included in short term rentals.

Winnie Chien, Public commented on the operator taxes charged by AirBnB and difference between the regulation of short term rentals and long term rentals.

Jennifer Mai, Public commented on the ways short term rentals increase property values.

Denise O'Leary-Siemer, Public asked about the current zoning code distinction of seven days for rentals.

Deb Cushule, Public asked and commented on the reasons one might become a short term rental operator including sharing properties and cities with people from out of town, the way short term rental operators monitor their properties and practices they deploy to avoid parties at their properties, the issue of party houses being a long term rental issue as well, out of state short term rental owners being the real issue, and how having short term rentals in low income areas increases property values.

Eric Leschuk, Public asked and commented the lack of regulation and licensing for long term rentals, the difficulty in managing the 600-foot rule as well as the possible negative implications to businesses and property ownership, and the idea to see how many of the existing short term rentals are within 600-feet of each other.

Callie Estrada, Public asked and commented on the reasons short term rentals are preferred over hotels for out of town guests.

Cory Stiles, Public shared his own experience as a short term rental owner who mostly serves people needing a location close to a hospital.

Kelly Watkins, Public asked and commented on the length of time it would take to process hearings and inspections for all the existing short term rental locations once proposed regulations pass, the unfairness of long term rentals not having the same regulations, the 600-foot rule being unnecessary because the short term rental market self-regulates, and the way short term rental applications encourage self-policing through ratings.

Sara McNeil, Public sent a written statement against short term rentals.

Action Taken: Feedback provided.

My name is Sara McNeil and I live at 1227 N Pearce St. I wanted to speak on item number 7 - Short Term Rentals. But before I do that, I want to share my story about choosing Wichita as my home. I was not born or raised in Wichita, but I chose to plant my roots here. My family moved to Wichita in 2012. We had previously been living in Austin, Texas but the price of houses was exorbitant, and we could not afford to buy. We packed our bags and moved to Wichita where the housing market was more affordable. After looking all over the city, we found a home near the river where we could raise our family.

We love our little home near the river. It has a rich history, and you feel elevated when exploring the natural surroundings. Our neighborhood has an abundance of parks, endless miles of trails, and museums for every interest, around every corner.

We love our neighborhood and cherish the relationships that we've built and the memories we have made.

Living in Riverside, we have had many next-door neighbors during the last ten years, but I want to speak on behalf of the last neighbor that lived next-door. My neighbor was also my friend. She was evicted in July of 2021 so that her home could be converted into an Airbnb. She lived next-door to me for three years. She is a single mother raising her son and fostering three nieces. She was an amazing neighbor that loved to garden and be outside. Our families played together, and we looked-out for each other, especially after the pandemic hit.

In the last three years, rental rates have risen and now my friend can't afford to live in Riverside anymore. Since 90% of Airbnb listing in Wichita are single-family homes, affordable housing continues to shrink as Airbnb listings grow, pricing-out my future neighbors. Airbnb is changing the fabric of my neighborhood and we are losing unique and diverse residents that make Riverside so special and appealing to us when we were initially looking to buy our home.

The last tenant of the City of Wichita Mission Statement is to "provide conditions for well-living". Cultivating a vibrant and sustainable community starts with affordable housing, ensuring that residents can live well and with dignity. I ask that you all consider the ramifications of rezoning residential neighborhoods to accommodate hotels and short-term rentals and the impact that has on the residents of Wichita.

Thank you for your attention and thank you Council Member Ballard for sharing my sentiments.

February 2023

District Advisory Board IV – 2/6/2023



**INTEROFFICE
MEMORANDUM**

TO: MAPD
FROM: Rebecca Fields, Community Services Representative, District 4
SUBJECT: **SHORT-TERM RENTALS**
DATE: February 12, 2023

This District 4 Advisory Board was held the evening of February 6, 2023.

Short-Term Rentals:

Scott Wadle, Director of the Metropolitan Area Planning Department (MAPD), presented the proposed ordinance to help regulate short-term rentals in Wichita. Short-term rental means the practice of renting out a furnished room, suite, home, apartment, or dwelling unit for a short-term stay. These include transient lodging offered through Airbnb, Vrbo, and other online platforms. Short-term rentals can touch on all four of these mission/goals. The question for Wichita is if short-term rentals are a good fit for our community. If yes, then what is the best/preferred way for them to operate in Wichita?

Recommended Action: Provide feedback and comments for the Metropolitan Area Planning Department.

Mr. Wadle gave a PowerPoint presentation of this proposal. The existing code for short-term rentals allows no stays for under 7 days. There have been numerous complaints about short-term rentals allowing large parties of which one resulted in a shooting. The current zoning code was developed before short-term rentals were even a consideration in private residential homes. The shooting incident occurred in the Crown Heights neighborhood in April 2021. This of course kicked off an investigation and subsequent conversations resulting in a City Council Workshop in October of 2022.

The definition of a short-term rental is the renting out a furnished room, suite, home, apartment or dwelling until for a short-term stay. These rentals include transient lodging offered through Airbnb, Vrbo, and other online platforms. Mr. Wadle pointed out that this issue effects all aspects of the City of Wichita's mission statement. In 2022, there were an approximate 475 short-term rentals inside the City of Wichita, over double the amount from 2018. There could be more than what is listed. Mr. Wadle showed a map of the City that shows locations of short-term rentals. The average rate is \$90 per night and does not include a cleaning fee. Roughly 90% of short-term rentals are single family homes.

There are three ways to operate a short-term rental:

1. With onsite management and shorter than 7 days
2. Without onsite management and shorter than 7 days
3. Without onsite management and at least 7 days

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If you chose option 1, you could apply for a "conditional use" and operate as a bed and breakfast. A Condition Use is allowed in almost all of the zoning districts. The downside of this is you have to go through the zoning process which is a 4-step process or more. If you chose option 2, you would need to list as a hotel or motel. This option would only allow operation in commercial districts. Option 3 allows rental for at least 7 days with a family, or no more than 5 unrelated people.

The current enforcement is problematic in that most booking sites do not give you the address until you book the premises. Once a complaint is received, an inspector is assigned and checks out the reported property and contacts the property owners. This can then lead to a written notice to the property owner and if the issue is resolved the case is closed. If it is not resolved, then the case will be presented at a future court hearing. In the year 2022, there were approximately 20 complaints that were investigated.

The proposed ordinance/code would be for Zoning. Changes will allow short-term rentals in the City of Wichita permitted by right or by Conditional Use zoning. If the property is owner occupied, it could legally be rented under the following zoned districts: SF-10, SF-5, TF-3, MF-18, and MF-29. If not owner-occupied you would need to apply for a Conditional Use in these districts. Due to the number of short-term rentals in the city, it would cause a significant problem for the MAPC (Metropolitan Area Planning Commission) to hear all of these zoning cases. Conditions for the proposed code change would not allow recreational vehicles (such as an Airstream) to be a short-term rental. An annual license would be required, and \$250K insurance per unit. A "good neighbor policy" would be posted in each unit, and maximum occupancy would be 2 adults per bedroom, and no gatherings over 20 people limited to 10 pm. A manager/operator would need to be available for contact 24/7. City inspectors would have the right to inspect the premises, the building structure would have to meet all code requirements, and there would need to be a distance separation between other short-term rentals of 600 feet.

DAB Member Beckie Jenek asked what would happen should a corporation own a residence as a short-term rental, and a homeowner within the 600 ft wanted to use their residence for short-term rental. Mr. Wadle replied that there is nothing in the ordinance that would allow preference.

DAB Member Rebecca Robertson asked Mr. Wadle how that would work in an apartment building should the owner want to use 20% of the units for short-term rentals. Mr. Wadle replied that in such a case you would have to do it on a property level and not a unit level. Mr. Wadle further stated that another question that came up was, what if a homeowner only wanted to rent out their house during a holiday season (for instance 2 weeks). Would that block other nearby residences from becoming short-term rentals. The answer is yes because you would still need a license and that would cover the 600 ft radius. This is different than what a boarding house would be ruled as because a boarding house is not a short-term rental.

Mr. Wadle stated that MAPD is exploring the possibility of being able to authorize a license instead of having to go through the Conditional Use process in order to save time, but once again this is something being explored and not part of the proposed ordinance at this time. DAB Member Beckie Jenek asked if the State of Kansas has instigated any laws or regulations about short-term rentals. Mr. Wadle replied that not to his knowledge. Ms. Jenek pointed out that if she stayed in a hotel that she would have certain rights that are monitored by both the State and the City. Whereas a short-term rental is not being monitored by the hospitality industry.

In terms of enforcement, Mr. Wadle explained that the Planning Department could fine up to \$500 per day and suspend a license for 30 days. Also, reasons to revoke a license would be for providing false information or non-payment of license or fine; if there are 3 violations within any 12-month period; and the applicant is ineligible to obtain a license. In addition to a short-term rental ordinance, there would also be a Party House ordinance. This would be to address nuisance gatherings on a residential property. A party is defined as a gathering of 5 or more people which allows the party to be a nuisance to surrounding properties. This ordinance would allow WPD Officers to immediately shut down the party,

DAB Member Rebecca Robertson asked what types of complaints have they been receiving on short-term rentals? Is it mostly party/noise complaints? Mr. Wadle said that they have been asked this, and so they worked with WPD on reports of loud parties and then matched some to known addresses of short-term rentals. They didn't have much success with this for various reasons. Mr. Wadle stressed that the majority of complaints are coming from the neighbors of these homes stating that they are renting them out for less than 7 days, and they are running a business next door to me.

Mr. Chris Start (guest) stated that he has a short-term rental next door and he has had WPD come out on three (3) separate incidents; one was a party that had 50 cars parked on his street and he lives on a cul-de-sac. All 3 times a party had gotten totally out of control and he doesn't want to live next door to a house like that in fear of his family's safety.

Mr. Clayton Pearson asked if Bed and Breakfasts fall under these proposed ordinances. Mr. Wadle replied no. Then Mr. Pearson asked if the proposed House Party ordinance would be applied just to short-term rentals, and Mr. Wadle replied that it would apply to all residences. Mr. Pearson further stated that he was at the DAB 6 meeting and that one of the concerns is not knowing who has permission to be on the property, so if a neighbor is looking out for damages or strangers on a property you have no idea if that person should be on the property or not. Mr. Wadle commented that making a short-term rental disclose their address and guests publicly is cause for security concerns.

Mr. Wadle said that another concern he heard at District 6 Advisory Board meeting is that those making money on short-term rentals could possibly inflate the cost of other residences as potential money-makers. Another concern was the lack of being able to make acquaintances of your neighbors by allowing short-terms rentals.

Vince Hancock (guest) stood and commented that another concern he had heard at another DAB meeting was whether the 600 ft restriction would be even practical to enforce due to keeping track of it all. At that board meeting the members/guests were in favor of WPD having a phone number contact for each short-term rental so any concerns or questions could be readily addressed. However, Mr. Hancock has issues with the Party House ordinance. There are already ordinances on the book to address loud parties that WPD is not currently enforcing (loud noise, littering, public intoxication, etc.) He is all for this ordinance if WPD would enforce it. Otherwise, it's worthless.

There were no further questions for Mr. Wadle. The minutes from this presentation will be sent to Mr. Wadle by staff for the comments and feedback.



Wichita Short Term Rentals Regulation Options

Comment Form

EVENT: REALTORS OF SOUTH CENTRAL KANSAS

DATE: FEBRUARY 14, 2023

INSTRUCTIONS:

1. Please fill in your name and affiliation.
2. Please write your comment on this form and **return it to the staff/Comment Box** or send to one of the following:

Mail: Planning Department, 271 W. 3rd Street, Wichita Kansas, 67202

City of Wichita comment@cityofwichita.gov

Name: _____

Affiliation (Company or Organization): SCK Realtors Govt Affairs committee
J.P. Weigard & Sons, Realtor

Please provide written comments below:

1. 300/600 ft. requirement seems to create some mis-aligned
incentives and maybe monopolistic activities that
would not be beneficial to other property owners.
- 2 It seems the policy, however it could be created,
will benefit one group and make others unhappy. I don't
know, as a realtor, that any of proposed policies make a big
difference, and they likely cost a lot.
3. I favor allowing current operators the ability to
continue - regardless of the 7 day rule. Or remove the 7 day rule



Wichita Short Term Rentals Regulation Options

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DATE: FEBRUARY 14, 2023

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E-m

Name: _____

Affiliation (Company or Organization): _____

Please provide written comments below:

- Recommend eliminating distance requirement due to potentially creating miniature monopolies and value on STR licenses. If not eliminating distances, recommend making licenses tied to individuals versus properties so you do not create undue competition for licenses.
~~if~~ - Utilize single annual inspections to cover the costs of administration. Similar to how hotel/motels must pay for annual fire inspections, this can limit the costs to administrator and create some accountability for STR travellers. ~~By not imposing transient taxes on STRs, this~~ This would allow the city to avoid charging transient taxes similar to hotel/motel.

March 2023

Email Comments

- I'm a realtor with Reece Nichols and have been an agent in Wichita for 13+ years. You and I have spoken before when the AirBNB shooting on Battin occurred (I live a few houses down).

I can't attend the meeting today in person or via zoom but did want to share my thoughts on a change in the short term rental policy and would welcome any update you might have after the meeting concludes.

While I realize changing the policy to allow shorter term rentals in neighborhoods classified as SF5 could result in a small revenue increase for the city, it negatively impacts the quality of life for the neighbors AND the real estate value in the neighborhoods. For example, those who move into a their "forever" or "dream" home who don't know a short term rental is next door and finds out after the fact, usually want to move. Higher turnover in real estate of the permanent residents occurs and then real estate values decrease or stay stagnate (in the current market, it's more likely a stagnate situation). The shorter the term of the "short term rental" the more often the turnover over of the "permanent" residents occur.

Changing the policy in SF5 is great for the owners of the short term rentals and offers more problems for the neighbors. I speak from the point of view of an experienced Realtor AND as a neighbor. In our neighborhood, Crown Heights, we've had someone violate the policy and someone was murdered...and gang activity was brought into the neighborhood. We've also had a short term rental host violate the 7 day policy and residents' homes were egged.

One, two, three night stays causes greater turn over in the residents/owners in the neighborhoods throughout the city. Property values decrease. I'd like to see the policy stay - and be enforced - at the 7 days.

Thank you for your consideration!

April 2023

Email Comments

- I live in a neighborhood that seems to have demand for people running businesses as short term rentals. Some operate well, not bothering neighbors or impacting the livability of the neighborhood. Others make neighbors feel like they are living next to hotels and cause many problems including noise, gatherings, and odd traffic making neighborly watchfulness impossible.

I further am very concerned about increased business holdings of residences impacting available residences in my neighborhood. I think this could positively impact the values of our homes (good if you own one) it makes the "market" for residences artificially inflated as people who want to live there are competing with a business who wants to make money from there.

Business and residential has always struggled to coexist easily- hence planning and zoning. I hope any license that is generated does NOT move to new owners as each new owner should

have to make a case to neighbors of livability and intent AND if neighbors have found the situation untenable they shouldn't be stuck with a business neighbor forever.

Limiting the number of licenses per block or within a certain distance of each other (1000 feet?) Might help a neighborhood avoid becoming an investment bank vs a place to live.

Thank you for taking feedback.

- Regarding: Short Term Rental Proposed Code Changes

APC, MABCD Staff, and City Staff,

As someone who was directly impacted by the illegal party and shooting at an AirBnB rented property in 2021, I really appreciate the time and attention that you all have given to the needs and concerns of your city.

I have a key request for clarification on the proposed Conditional Use Permit process - I would like it clarified whether or not properties that meet only at a corner be considered to abut. In my search I have found that some municipalities consider these to abut and a few that do not consider them abutting. Given the potential impact that a short term rental has on immediate neighbors, I and my neighbors want them considered to be part of the notification and approval process and would like the code to reflect these properties as 'abutting'.

I believe another key request for a change to this code is to remove the ability for an approved Conditional Use Permit to follow the property in perpetuity. For other property uses in a residentially zoned property - say a hair salon or a mechanics shop, substantive updates to the property must be made that highlight the changes to said property's use. That is not the case in a residential Short Term Rental. As such, we believe that Conditional Use Permits for Short Term Rentals should expire with the sale of the property. Also, please keep the 7 day limit in place until full approval is granted via CUP and licensing - we really don't need 18 months of 'Wild West' renting through Wichita neighborhoods as this ordinance takes effect.

Lastly, I really do want to applaud the proposed change allowing input from neighbors and the required licensing for operations. The neighborhoods that make up the core of the city are often older and lack the protections of suburban HOA's and this gives us the opportunity to either welcome or discourage the traffic and investment that short term renting could bring. After that April night, most of us in Crown Heights don't want that investment anymore.

- What are the consequences of operating without a license? How is that enforceable? Especially if the owner is not in state or in country. The new Zoning Code Amendments are well thought out and control very many of the issues neighbors deal with, so thank you for your hardwork as staff and MAPC.

I do have a concern that 50% of neighbors having to protest seems a very high bar, 20% is planning process currently for 200 ft. area. I could see between 20 and 33% much more reasonable considering, how difficult it can be to engage people to sign a protest petition.

My concern as a neighborhood association board member and a WIN board member is about impacts of density on affordability, livability of neighborhoods regarding not actually having neighbors but guests and ensuring Wichita will always remain a great place to live for residents as well as a good place to do business. At this point with 450 homes listed I don't see most of my

neighborhood concerns being compelling this year. I just ask would the planning department and or MAPC Board reconsider density impact on a yearly basis and IF density on any block (more than 4 homes on a block) or density of any neighborhood more than 10% of homes. Then some limiting items be considered and added to the zoning requirements when needed.

I had to go pick up kids at school. Sorry I couldn't stay.

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-



The REALTORS® of South Central Kansas does not support the proposed City of Wichita Regulations on Short Term Rentals. Following are concerns about the Proposed Zoning Code Updates and Licensing Ordinance, as well as recommended actions for the City to take prior to a vote of MAPC or City Council.

The inspection requirements of the STR Licensing Ordinance may infringe on rights under the Fourth Amendment to the U.S. Constitutions and Section 15 of the Kansas Constitution Bill of Rights. **RSCK requests a legal opinion from the City Attorney** as to whether the inspection requirements of the STR Licensing Ordinance conform to the requirements of the Fourth Amendment to the U.S. Constitution and Section 15 of the Kansas Constitution Bill of Rights, as well as whether the STR Licensing Ordinance would survive challenge under the unconstitutional conditions doctrine.

The language of Section V-L.7.c of the proposed STR Zoning Ordinance is in contradiction with the Planning Department Staff's description to the Advance Plans Committee on March 9, 2023. As currently written, the abutter protest threshold would be based on the number of landowners rather than the number of abutting lots, the area of abutting lots, or some other method. This is an important distinction because a lot can have more than one owner. There is an apparent discrepancy between what Section V-L.7.c actually says and what City Staff presents to the public about its operation. It is unclear whether the APC would have supported the abutter protest provision if staff described it accurately based on the actual wording of the proposed ordinance. **RSCK requests that the City delete Section V-L.7.c, and if unwilling to do so, at least return the issue to the APC for a re-vote.**

The proposed written notification requirements for STR license applicants are unfair and unclear. The written notification requirement of proposed Section 3.40.050(q) unfairly singles out STR license applications by requiring abutter notice of an application even though abutter notice is apparently not required for any other type of business application. In addition, proposed Section V-L.5.a.2 of the STR Zoning Regulations separately requires that written notice of an STR administrative permit application be "mailed to the owners of all properties which abut and are contiguous to the application area." It is particularly unclear why notice of a license application would be required in addition to the notice required under the STR Zoning Regulations. It is also unclear what information the written notice of a license application would have to contain. The complete lack of information as to what the written notification to abutters must contain makes it impossible for prospective short-term rental licensees and the public to fully understand and comment on Section 3.40.080(q). **RSCK requests that Section 3.40.080(q) be deleted. If unwilling to do so, RSCK urges the City to revise the ordinance to clarify what information the written notices must contain.**

Subsections 3.40.090(d) and (e) of the proposed STR Zoning Ordinance would effectively require STR licenses to be suspended for five-years for a single violation of an STR owner or licensee. As written, a single violation by someone who owns 25% of an STR would effectively prohibit the City from issuing or renewing a license for that or any other STR property in which the same owner has a 25% interest, and that this prohibition would be in effect for five years. This is unreasonably punitive. **RSCK requests that these provisions be deleted from the STR Licensing Ordinance.**



Section 3.40.050(c) would require short-term rental owners to maintain liability insurance coverage of \$250,000 for each unit. It is not unreasonable to require that an STR have liability insurance coverage, but owners should not have to purchase and maintain liability insurance if equivalent coverage is already provided by a third party, such as an online booking platform. **Section 3.40.050(c) should be revised to make clear that the liability insurance requirement can be satisfied by coverage provided through a third party, such as an online booking platform used by the STR license holder.**

Section 3.40.050(f) would require owners to display a "Good Neighbor Agreement" in each short-term rental unit. Additionally, Section 3.40.070(b) would require inspectors to use an "inspection form" developed by the City for the purpose of verifying "compliance with the City's housing, fire, building, zoning and all other applicable City Codes." Without access to drafts of these documents, it is not possible for short-term rental owners and the public to fully understand and comment on the requirements of Sections 3.40.050(f) and 3.40.070(b) of the STR Licensing Ordinance that assume the use of these forms. **RSCK requests that these documents be made publicly available with a proper window of time for public feedback prior to a vote from MAPC or City Council.**

Sections 3.40.080(a) and (b) would require short-term rental license applications to include the owner's name, address, telephone number, Social Security number, and date of birth. These requirements raise privacy and safety concerns for STR license applications. Requiring applicants to disclose their Social Security number and date of birth unnecessarily increases the risk of identity fraud. The STR Licensing Ordinance would force applicants to choose between renting their property, and keeping personal information private in order to protect their personal safety, privacy, and in this time of increased identity fraud, their financial security. **The required disclosure of Social Security numbers and dates of birth on license applications should be removed.**

Section 3.40.080(i) would require that STR license applications include: "The name, phone number, email, and business address of the Owner or Responsible Party who will be *available twenty-four (24) hours per day, seven (7) days a week to respond to complaints* regarding the operation or occupancy of the Short-Term Rental." This provision is flawed in at least two ways. First, it requires STR license applicants to identify a person who is available 24/7 to respond to complaints regarding the short-term rental, but the STR Licensing Ordinance contains no provision that actually requires that someone to be able to respond 24/7. Second, it is unclear what it expects the owner or responsible person to do in response to a complaint. **RSCK requests that the City revise the ordinance to clarify the above issues.**

Section 3.40.080(j) would require STR license applications to include a "scaled floor plan showing the layout and square footage of the short-term rental unit(s)." STR owners should not have to provide the City with scaled floor plans, which likely would have to be done by a professional engineer or architect at substantial cost to the property owner. If the intent of this provision is simply to have a record of the number and location of bedrooms for the purpose of establishing the unit's maximum occupancy, then a hand-drawn sketch should suffice. **RSCK requests that the City revise this Section to be less burdensome and unjustified, or clarify intent.**

The proposed STR regulations would impair the right of private property owners to rent out their property on a short-term basis. Renting one's property is a core right of property ownership that should not be subject to discretionary zoning permit requirements or treated as a "privilege".

May 2023

Email Comments

- To: Members of the Wichita KS- Sedgwick County Metropolitan Area Planning Department

My husband and I have lived in Crown Heights for approximately 25 years, and in College Hill for 20 years before that. My in-laws also lived in College Hill, on 2nd & Quentin, from the 70s on. The kids in our families went to neighborhood schools and made lifetime friends. We do not live here by default, but because we love the area. This is home, and we enjoy and are proud of our beautiful neighborhood.

This is how people feel who reside in Crown Heights and College Hill.

On the downside, we have always had to watch businesses nibbling away at the perimeters. It is an old story that developers try to cash in on the historic beauty of the area where homeowners have put significant investments.

But now these family neighborhoods are being invaded by Short Term Rental owners that are buying up strong properties within Crown Heights and College Hill to turn into, actually, hotels. They want to cash in on neighborhoods zoned for single families to live, streets where homeowners have built community with neighbors and live where they want to raise their children. Sometimes the STR owner even misrepresents themselves as a future resident. These targeted STRs are usually not neglected properties but lovely homes on streets that are thriving.

This is so obviously greedy and damaging to the neighborhood. It is also not only bad for the CH/CH areas, but think what the results will be in the not-too-distant future. The property value, quality of life, and investments of the whole area will be negatively impacted.

PLEASE do the honorable thing here and preserve the integrity of Wichita's historic neighborhoods.

* Honor the mandatory stay of 5 nights. It should not be the neighborhood's problem that STR owners can't make a go of it. It is their responsibility to know the rules of their business. Honor the single family zoning. This should be a given. College Hill and Crown Heights have always been thriving neighborhoods with strong real estate value, and their desirability keeps many people from leaving the city limits.

* Put some bite into violating neighborhood protections. STR owners often violate the mandatory stay.

* Honor the potential impact to the homeowners of contiguous properties. They bought their home to live in a NEIGHBORHOOD, not a commercial area.

STRONG NEIGHBORHOODS MAKE STRONG CITIES. Protecting the irreplaceable neighborhoods of Crown Heights and College Hill will be the right thing for the long term health of Wichita.

- I continue to think about the zoning change on short term rentals and have reached out to many of you to discuss. I understand that things change - I'm concerned about protecting property values and neighborhood charm in neighborhoods NOT protected by an HOA. HOA's rarely - if ever - allow short term rentals. If they don't have any guidelines in the association addressing them, they can be easily added. Neighborhoods like Crown Heights, College Hill, Riverside, Delano and Sleepy Hollow (to name a few) do not have HOA's, are super charming and prime targets for short term rental property owners. Can you tell me what the city or city council is proposing to protect property values? To protect the charm and integrity of these neighborhoods?

As realtor, I've worked on transactions in Crown Heights where listings sold less because the buyer found out a short term rental was on the street. I've had transactions fall apart because of it. I've seen neighbors move to their "dream home" only to find out a STR is next door and then move. STR's definitely impact the residents/asset value of our communities not protected by HOA's. Is there anything being proposed to stop multiple homes on the same street from being STRs? Perhaps one per block? I'm sure that could be checked upon licensing the STR fairly easily (at least it seems like it could be). What are some other options? What is else is being considered?

Thank you for taking the time to "listen" to my concerns. I appreciate it. If there is anything I can do/should do/need to do to voice further concern, please advise. Happy to talk with any of you if you're willing to discuss -

- Thank you for your quick response.

From my perspective, there are two factors that are most important in any new ordinance.

First, cutting the minimum stay to only 1 night is entirely unacceptable. The issue of large gatherings and parties will be exacerbated if this change is made. As I mentioned, we have had two such parties that resulted in shots being fired in the past 18 months in College Hill and Crown Heights. I understand that 7 days may not be reasonable. There is, however, a reason that the zoning regulations keep motels out of residential areas. Increased traffic, parking issues, and of course the potential for disturbances are very real concerns. A compromise of four days, or even three would likely be more palatable to residents. Less than that will damage neighborhoods, and allowing that simply because AirBnB landlords want it is poor public policy.

Second, I hope that any change will include language giving police the tools they need to enforce restrictions on the spot. They should be empowered to ticket both the registered guest, and the landlord. They should also have the ability to break up any gathering that exceeds size standards, or goes past the curfew.

Please do let me know when this issue is put on the City Council agenda. I appreciate your time and attention.

- I understand that changes to short term rental regulations are about to come to the council. I also understand that new restrictions we thought would address concerns about having these rentals in neighborhoods have basically been stripped out of the new ordinance. It was my understanding that they were to include a minimum stay requirement of 7 days. That is apparently now gone... and single night rentals are again allowed.

This is just not acceptable... and it's damaging for neighborhoods. Single night rentals make massive house parties possible. This isn't speculation. It has happened twice in less than 2 years within 10 blocks of my house. Both resulted in multiple shots being fired, and one in the death of someone at the party. The other shooting took place about 40 feet from my bedroom window. I could hear the shooter and his target screaming at each other. It was frankly pretty terrifying.

I certainly don't want to be unreasonable. The proposal for 7 days rentals is probably more than is needed. But allowing single night rentals is ENCOURAGING the use of these rentals as a party house. That's just not acceptable, and does not address the primary issue that neighborhoods are facing. If the minimum were four days, or even three, it would make a huge difference.

The ordinance needs to specify a maximum number of guests... specifically guests who are not registered and I would think that 15 people over and above the bedroom capacity would be more than sufficient. A 10pm end time for any gathering is a good idea. It should also probably address parking. The owner should be required to provide off-street parking for one vehicle for every two persons staying in the rental.

I am pleased that you are requiring local management with a 24 hour 30 minute response time required. I also hope that you will set up the ordinance so that police can actually enforce it on site, by writing tickets to both the occupant and the owner, as well as breaking up any gathering.

The recommendation coming to you from the planning department is NOT adequate and should be sent back for major revisions.

Thanks for your time and attention.

June 2023

Email Comments

- Crown Heights. Will be out of town for meeting. Short Term Rentals need to be minimum of 7 nights. I live in a neighborhood not a motel. If we continue allowing STR's in neighborhoods I would like a nice permanent sign on the property stating that it is a STR with owner contact information included on sign. Thanks for taking into account my concerns.

July 2023

Email Comments

- Hope you all are doing well. I have a conflict with this morning's meeting and am hoping to get back in time to hop on the call. In case I'm not, I want to verbalize my concern about the proposed short term rental policy.

It has come to my attention that Realtor Of South Central Kansas staff has drafted the policy you are using for STR. That policy is not necessarily representative of the Realtors Association as a whole and a survey of Realtors/Brokers was not completed. I was informed by the Legislative Affairs staff person that not one person responded to her request sent out in the e-news letter. Surveys and requests for feedback could have been gathered in other formats.

I'm really straddling the fence on the individual property rights on this issue. A property owner should have rights to do what they wish with their home (as long as it's legal, the property is zoned for it and it doesn't violate an HOA {if in an HOA community})) BUT it should not impact the rights of the neighboring property owners.

If the question of "are there short term rentals nearby" was put on a real estate property condition report and the answer was "yes" I can tell you I would not buy it. I believe others feel similarly.

Thank you for taking the time to look at this. Hope to make it back in time for part of the meeting.

- It's come to my attention that you're receiving feedback from individual REALTORS on STRs. I think it's important that you know that RSCK still holds our position on the proposed policy and that we appreciate the opportunity we've had to engage in the policy making. Below is a summary of our association efforts in engaging in the issue, just to clarify any misstatements being made by REALTORS.

RSCK staff and GAC have been monitoring the issue of Short Term Rental Regulations since initially proposed following the Crown Heights shooting in April 2021 and more recently as draft regulations became public in October 2022. Feedback from the association general

membership was solicited via social media, the eReport, and a direct email to all members in January. No comments were received.

A Land Use Initiative (LUI), a program from NAR in which the law firm Robinson & Cole analyzes proposed regulations and offers notes and revisions, was requested in early March. The LUI was returned to the association on April 11, upon which RSCK based its position and concerns. This position was presented to the Metropolitan Area Planning Commission (MAPC) Advance Plans Committee on April 13 and a vote on the regulations was deferred until City staff could review RSCK's concerns. RSCK and City Staff met at the end of April and discussed concerns and proposed changes. These changes were reflected in the version presented to the MAPC Advance Plans Committee on May 11, which was approved by the committee that morning and by the entire Commission later that afternoon. This item will be voted on by the Wichita City Council at an upcoming date.

Any arguments against STRs on the basis of protecting property values and "neighborhood charm" should be founded in research, not opinion. RSCK has presented a thoroughly researched and NAR-vetted position in the best interest of our association.

Being a good partner in crafting public policy often means compromising. And in the case of short term rentals, we have reached a compromise that protects both consumers and private property rights.

Thank you both for your continued work on this policy and your service to our city. It's not an easy job and I'm glad you're the ones on it!

BANUELOS: Right here and the next one, right here. I own this nine acres to the south of the property, and I own some on the front of the property, too, and all the way here, all the way back (referring to the aerial map).

MEYER: I understand the pains of infill and I don't take it lightly. I think there was a zone change within the last month or two where all three of these lots here (referring to zoning map) went to multi-family, so you can see that infill is occurring in multiple locations in this area and will continue to happen throughout here. Our request does meet the Comprehensive Plan for the City, which we are now calling the Community Investment Plan.

FOX: I know it's in our reports, but can someone restate what the screening requirements are, if any, between multi-family and single-family in that area? None, is that correct?

ZEVENBERGEN: With this going to two-family residential and they're not doing a Conditional Use for multi-family so it would just be straight up two-family residential, there's no screening requirements.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **B. JOHNSON** seconded the motion, and it carried (14-0).

4.9 DER2023-00006: Wichita-Sedgwick County Unified Zoning Code (UZY) amendment to include Short-Term Rental Businesses.

SCOTT WADLE, PLANNING DIRECTOR: Presented the staff report.

SHARON DICKGRAFE, CHIEF DEPUTY CITY ATTORNEY: The licensing amendments aren't approved by this body, so their approval is not required for the licensing – it is required for the zoning, but certainly we will take any comments that the board has and public comment and continue to tweak these through the process.

UNKNOWN SPEAKER: Inaudible.

WADLE: That is what's recommended – you do not have to.

ALDRICH: I've got a problem with this. I know I represent one of the County Commissioners but I live in the City of Wichita and I happen to live in an area that's governed under an HOA's – we have approximately seven and it's like herding cats – but Crown Heights isn't the only place that's had shootings in residential areas. I'm referring to last December – we had a situation over in The Moorings where the parents decided they were going to let their underage kids have a party and they got this thing called social media, and the next thing you know, there's over a hundred kids there, or young adults, and as a result some group didn't like the other group, and so they shot each other. The PD was only concerned with the shooting – they weren't concerned with why or what the contributing circumstances were which were the underage drinking and this, that, and the other. Meanwhile, a very safe neighborhood over there is suffering the ramifications of that. We also had a house in The Moorings that actually did an Airbnb and it's amazing how all of the sudden when we knew it as the residents over there is when we started having a lot of issues with vandalism and break-ins. I got a lot of doorbell things that caught a lot of people, a lot of kids, out there at three, four, five o'clock in the morning and turns out they all came from that Airbnb location. I know that the HOA's and The Moorings are in the process of looking at their covenant and we're probably going to have to modify that but the consensus there almost by a hundred percent is to ban the short-term rentals and Airbnb's. It's the negative impact that it has on surrounding residents is tremendous. I just think you ought to consider the other issues that from the time the PD is called, they're called after the fact and

the damage is already done, and then somebody else has got to clean that up. You look at the Golden Rule, and is it going to have a negative impact on surrounding communities or surrounding residents – short answer is yeah. We even have a gentleman that does this for a living in other states. He even made the comment, no way in the world would he want something like this in our neighborhood. It's a money maker but sometimes we have to look at what's best for the community instead of what's best for our pockets.

FOSTER: I live in Delano. I have a short-term rental across the street, right in front of my house, and another short-term rental right across the alley, behind my house, directly. They've both been there two or three years at least. One or two slightly noisy parties but otherwise it hasn't been a problem for the neighborhood. I never thought I'd be speaking in favor of them, particularly. I think two within sight of my windows is probably a little more than is reasonable but the point is I don't think you can throw the baby out with the bath water on this. Yes, there have been some issues and I think that's what Planning Staff is talking about trying to address, but in some neighborhoods having a short-term rental that is well maintained and has been (inaudible) attractive home is a way better option than having a house basically abandoned and sitting there empty, which is sometimes the other alternative, because these short-term rentals can bring in enough income to encourage an owner to really maintain an older home. I'm not sure what the solution is. I think staff is probably looked into as many options as possible and come up with the best set of things that are worth trying right now. We may have to tweak it later, but I do think we need to consider this as yet another housing option in the variety of housing that a community needs.

NICKS: I got a couple questions and then just an observation. Scott, one of the first slides you put up, you had company owned versus individually owned. What percentage are company owned in town?

WADLE: I don't know, sir. I'm sorry.

NICKS: You put up a scanner graham, did you not?

WADLE: Yeah, there was a map that was provided to us by one of the companies that provides a monitoring service for these so they can tell the city how many are operating and how many are in compliance with their local regulations (here it is) and as part of that map in the legend, they identified ones that evidently are Priceline owned or Expedia owned so they're owned by a company that's operating them as a short-term rental.

NICKS: That's the first observation. The second one is that evidently you have 25 cases, I believe is what you said, so every other week you get a case, and a case as if somebody contacts you and has a problem, right?

WADLE: Yes, that's right.

NICKS: So, it reminds me of going to the doctor and saying, well, you know how bad is your pain today? Of those 25, how bad was the pain? Are some of them just somebody's parking in my parking spot and I decided to call up? How many of the 25 are serious like Bob's talking about? And I don't know why the police doesn't just handle this anyway, but go ahead and explain that to me.

WADLE: Sure. In terms of those violations, I'm going to turn it over to JR to provide some more in-depth analysis on that.

JR COX, ZONING ADMINISTRATOR: My impression is, is that the violations that we have received are because of the awareness that has come in the past couple of years. We're not getting violations, for the most part, that are – there's a problem, there's noise, there's trash, there are cars in my yard, there's fireworks, there's parties at 1:00 in the morning. It's – hey, we looked online, we know our neighborhood,

we know that house is an STR and it can't be there – that's by far the vast majority. The real problems – hey, we have an issue – really very few. If that helps?

NICKS: Well, perhaps. It just seems to me that this is a problem that must have been coming to a head for some time and all at once, you've had a couple of things that have been pretty dramatic and so it is coming to a head, and so to me, it's as though we're just rushing around trying to figure out what it is we need to do. I'm brand new to this thing this morning but we spent two hours sitting around talking about this and I was more confused at the end of that time than I was when we began. (Inaudible).

DICKGRAFE: JR, to clarify, the 25 cases that you looked at were purely zoning, correct?

COX: Yes, you'd be correct.

DICKGRAFE: Purely zoning that they were operating illegally based on zoning, so those aren't going to include the – he parked in my space, the trash hasn't been taken out, there's too many people parking on the wrong side of the street – those are the kind of things that zoning is not going to deal with.

NICKS: I just got back from Palm Springs and my daughter said you ought to just check into an Airbnb. I said, what is that, and so anyway I got the app and I'm the one responsible in the group of booking it and we booked it for five days. I recall we cleaned the place up and turned the key in and did it worked just fine. It was a good experience at any rate, so I don't know how many times people have really good experiences as Debra was talking about versus the few times that something just goes awry and kids end up like they would anyway out in the yard with a hundred people shooting off fireworks or maybe shooting each other, I don't know. If I were voting to do anything, I think I'd just sit on this and delay it for a while and think about it a little bit more, make sure you had all your ducks in order, because it doesn't sound like we're really ready to make a decision one way or the other.

WARREN: Right now, we're living in the old west where we have no rules, whoever's got the most guns gets to make the decision. If we've got problems, we need to deal with them, and some of this gives the police and authorities the tools that they need to keep things a little more in line. A lot of other cities are already ahead of us on this – they recognize it as a problem. Some rules and regulations and some guidelines to owners on how to take care of their properties and how to watch out for their neighborhoods is just what we need. If this thing needs some tweaking, we can do that, and we will because we'll learn as we go. I think that we're a lot closer than we were six months ago when we were dealing with definitions and trying to figure out what kind of properties, how's this different from a hotel, how's this different from a bed and breakfast – we've got definitions in place that we can make this happen and we need to give our police officers and authorities the tools that they need to keep it in line. This is the direction we need to go with it.

FOSTER: I was just trying to mentally run numbers and in response to Mr. Nick's question, I mean if they're making roughly \$90 a night, you figure they've got it at least rent it out for half a dozen nights a month to even break even and there's almost 500 of them – that adds up to a lot of people visiting our community, spending money in our community, having a pleasant experience in Wichita and not causing any trouble whatsoever in comparison to the occasional horrible event where a bunch of people get drunk and start shooting guns, which happens in privately owned homes too – just a thought.

J. JOHNSON: Out of curiosity Scott, has the hotel association weighed in on this?

WADLE: No, sir, we've not heard from them.

BLICK: I have a question because majority of these property owners that are renting out their homes are running these as a business, an LLC, and that's how they're claiming their funds. They're also going through

a commercial company and it's all being done as a commercial business. The problem I have is we're only going to do an inspection if there's a complaint. Usually if there's a complaint on the weekend, MABCD is not on staff on a Saturday or Sunday when there's an issue, so we will rely on a police department to go out there and actually go and see what the situation is. Well, most of the time, if it's a housing issue, they always rely back to MABCD and say, hey it's their jurisdiction and let them do it. I think that if we're talking about safety – the Fire Department inspects hotels and motels in the City of Wichita, they inspect property and commercial businesses – I think they need to inspect this. If people are coming to our town and they want to make sure that they are safe, I think an inspection needs to be done first, and then you can also have an inspection if there's an issue, but I think there needs to be one at the very beginning to allow this to happen.

MCKAY: I think that we might be doing like Hugh was talking about – a little premature on setting up rules and regulations – forget if it's a business or an individual or whatever it might be and we don't really know – we discussed this morning about the jurisdictional area of notification area and all those different things and I don't think we've really sat down and say this is what we want, this is the rules, we don't have a particular way of the licensing and who gets the licensing and who knows who they are. We don't even know really how many of these are in the City of Wichita, we're guessing, but we don't know and that's like saying how many homeless are there in the city, well who knows. The Realtors came back and said they were against it but what they're against, I don't really know even though I've read the letter. I think a little bit more research might be done. It was brought up a while ago about the hotel people. I hope we're not rushing into let's set this rule or regulation and we may tweak it. You know as well as I do how long it is going to take to tweak it once you get it in the city or any other city. I'm just saying as big a load as you folks have got now you want to take on another big load because you don't want to put anything on us, or you don't want us to have to do it, but if we had some rules that said you know this is what we need, this is the program we're going to follow, bring that to us in black and white and then from there, rather than say we really don't know what this is and what our notification areas are going to be or anything else, regardless if it's for licensing or for complaints or ownership, you know ownership – a lot of people of these houses may be owned by somebody who lives in California.

FOX: They are.

MCKAY: Well, okay. I'm just using that as an example because you know we've had a big influx of investors coming from the east and west coast because it's a nice, great city to live in and our cost to do business here is so much less than it is on the east and the west coast. If we take everything into consideration rather than just jump into it and say we want to do this because somebody got shot at well that goes on every day in this city, somebody gets shot at, and somebody often gets killed. We don't seem to be doing a whole lot about that, I hate to say that as far as zoning and all this and everything else concerned because individual rights. I think that's one of the reasons why the Realtors maybe said something about the Fourth Amendment or whatever it is about private rights or personal rights or whatever it might be. I just don't want to rush into anything that's going to create problems that we're going to tweak later because tweaking later is really a lot harder to do than to do some particular work up front.

B. JOHNSON: Motion based on John's comment that we defer.

GREENE: I'll second that.

WADLE: This is actually a scheduled public hearing so I would encourage you to take public comment.

FOX: Yes, we have to take public comment.

MILES: One of my concerns is that, as things stand right now, anybody that is operating a house like this

for people to say in overnight, they're required as things stand right now, to not rent that property out for less than seven days, so anybody that's doing that right now, if we do nothing, is currently in violation. I would expect that most of them aren't actually renting out for seven days, so I think we need to consider doing something to change that. I have a place that I had rezoned – it's a home, it's like a VRBO – but I had it rezoned because of where it's at, but I can assure you that there's been several times that people have tried to book by place to have wild parties in. One in fact that did occur and when the police showed up at 4:00 in the morning, when the knives were out and people were fighting, the police told me I couldn't even make the people that had rented the place for the night leave there because I was legally obligated to let them stay until the checkout time that I had given them – that's a problem.

FOX: Scott's reminder that this is a public hearing and we have people in the room who came for the purpose of speak we want to honor that. If we have a motion to defer than anything we speak here today, what happens to that information, Scott? Can you remind us?

J. JOHNSON: I will wait to withdraw the motion until after we have the public hearing.

FOX: And will you withdraw your second?

GREENE: Yes.

WADLE: In terms of the question, what would happen if this item is deferred to another date, is that we would take all of the public comments, we would of course capture those in the minutes, and then we would share those as part of the public input packet so that people could see what the comments were.

GREENE: One thing that Commissioner McKay mentioned was the Realtors of South Central Kansas' letter that we all received, there were several items in that that raised concern for me.

FOX: And I think we have representatives here to give comment today.

GREENE: I think it's important that we go ahead and have the public comment.

FOX: So, you're going to rescind your second?

GREENE: Yes, I'm going to rescind, but also I'll use it again later.

DOOL: I think this is something that's going to be difficult to police because how are you going to know the people that are not complying with this law? Are you going to try to run them down on the internet or how?

WADLE: There are companies that specialize in enforcement of short-term rentals for exactly that reason. When we reached out to cities to do our research, we did find some who are trying to do enforcement manually with regulations in place, and I don't know how they were going to accomplish that, simply because the amount of manpower and the hours that would be necessary. These companies they use artificial intelligence to look at the postings that are available on VRBO, Airbnb and a variety of other sites as well as matching it up with data from the Appraiser's office or other entities, Google Street View. They use artificial intelligence to tell which listings relate to which properties and then they look at the listings to see whether or not they are in violation of your local ordinances, so in that way they're able to flag multiple properties very quickly.

FOX: At this point, let's move to the public hearing. We do have two Commissioners who will be leaving at 5:00. We do have one other case after.

GENTRY THIESEN, GOVERNMENT AFFAIRS DIRECTOR WITH REALTORS OF SOUTH CENTRAL KANSAS: I would clarify that we understand as an association the need for changes in the zoning code and the licensing ordinance. We know that that's necessary for the short-term rentals to operate for shorter than seven days. But we have identified and you've all received a copy. Thank you also to Scott and staff for distributing out that copy. I know it was not within the public comment period but we didn't receive the analysis back until Tuesday afternoon and we got it out to you as quickly as possible so thank you for entering that into the record, we do appreciate that. You have all seen that we have several concerns with what is proposed as written and we are asking today that you delay that vote. The first of which being, I'll mention four of the ten concerns just to keep it short, but the first of that being that we're worried about the implication of unlawful inspections under the Fourth Amendment to the U.S. Constitution and section 15 of the Kansas Constitution Bill of Rights. We hope that the city will provide a legal opinion on that prior to any vote being made on it. Secondly, we are worried about the privacy and security of applicants because of the required disclosure of social security numbers and dates of birth on license applications and we request that that be removed. Earlier, Scott did address the question that was made about the abutter protest threshold – whether it is the number of owners versus the area of property it would take to bring that threshold. I also would express the concern that had the Advanced Plans Committee known that on March 9th, would they have voted the same way, I'm not sure, I think that that merits some further discussion. And then also, we request that documents be made public before a full decision can be made, namely the Good Neighbor Agreement and the inspection form that are listed within separate areas of the licensing ordinance. Because those are not publicly available now, how can any member of the public provide input and how can any member of the MAPC properly vote on that without knowing exactly what it entails? Due to time constraints, I've only shared four of these reasons. I'm happy to answer any further questions, but we request a delay of the vote today.

JASON KRAUS, 243 NORTH PINECREST, WICHITA: I am someone that has become very familiar to Scott and JR, probably unfortunately to their detriment, but I really do appreciate all of the time and attention that staff has given to my community in Crown Heights after the event that took place almost exactly two years ago. We've got a couple of requests as a neighborhood. First of all, I do want to say we like that we are going to get a voice in approval of the usage of properties nearby that otherwise should be residential, should be neighborhoods, should be neighbors that I can interact with. Not only do I live in this neighborhood, but I help run our neighborhood Fourth of July parade and I want more families and neighbors as part of that parade than I want businesses operating out of residential properties in these areas that are supposed to be residential. I do understand that Airbnb properties represent oftentimes investments in neighborhoods as was mentioned and that is absolutely something that if a neighborhood wants that investment and want, that traffic, I do believe that they should have the ability to say yes, I would like that. I very much want the opportunity within our neighborhood to continue to provide the opinion of a no when we state those things. I also would like to state a couple of other requests that we have. If something has to go to Conditional Use and gets approved through Conditional Use, due to the fact that a residential property doesn't need to be altered substantially to receive a Conditional Use as opposed to say a mechanic shop or a beauty shop, I don't believe that that Conditional Use should follow the property and perpetuity as they currently do right now – that should be something that's severable upon sale of the property, not a Conditional Use that carries forward, I believe. I also would like to see our City Council not bothered by zoning approvals that may have been rejected twice by neighbors – that's a pretty strong no – and now we're going to take more city time to bring it up there even if it's been successfully protested twice. Again, I would like to state, if an ordinance gets passed and until the licensing is in place, please keep our seven day limit there and potentially see if there's further ways that we can apply protections in our neighborhoods because as you mentioned, yes, every single Airbnb property that's operating right now, is operating in violation of that, and I have ones visible from my bedroom window as unfortunately the victim was on April 11, 2021.

FOX: I just want to make sure that it's accurate that Crown Heights has a neighborhood association but a

homeowners association, is that accurate?

KRAUS: We do not have a homeowners association, and our neighborhood association is informal. I've kind of become an informal leader just because, again, my home was very directly impacted by the events and I've had to become very, very aware of it.

FOX: So, as a neighborhood association of the fairly informal, you have no access to legal support to rally your neighbors toward any kind of action like a homeowners association would, is that accurate?

KRAUS: The legal support you see before you right now is our legal support – we have none.

STEPHANIE MCCURDY: I'm a realtor member here in the City of Wichita. I also live in the City of Wichita. I do have one thing that I would like clarified today. Could the City Planning staff clarify what they are currently doing for the non-compliant short-term rentals, and are they sending cease and desist letters specifically regarding the shorter than the seven day timeline?

WADLE: That's a good question and that's a tricky question because where we are in the process right now is, since we're at this point and we've had a dialogue leading to this point, we are taking in complaints, however, we are not referring them to the courts for action at this time – that could change at any time, but given where we are in the conversation, we felt that it was not prudent to advance those to the courts.

FOX: And the nuisance ordinance would be out of our purview, but could there be the possibility of a nuisance ordinance being administered immediately through some other mechanism to address the party situation?

WADLE: Yes.

FOX: The ability to disperse and all the junk?

WADLE: Yes, so you at this point, because it's not part of the zoning code, you would be strictly advisory on that. Even if you do not provide a recommendation on that it does not preclude the City Council from taking that item up and considering whether or not to move forward with that. You could even today, as part of your deferral action, if you felt strongly that that should move forward, separate that out from the other items.

DICKGRAFE: The party house ordinance applies to any residential use, not just short-term rental, and it was Overland Park, not Topeka, who passed it. So yeah, that can easily be separated out and go forward in advance of some of these other things that we're spinning around.

FOX: So, if Topeka passed some of the issue, inspection wasn't a part of that, but some of the state law issues might already be kind of worked out.

DICKGRAFE: Overland Park did two things. One is they do have a licensing structure, and they also went ahead and passed the party house ordinance, primarily in response to problem short-term rentals, but it applies to any type of residential structure.

KELLY REED, 510 NORTH BAY COUNTY STREET, WICHITA: I'm coming to you today as both a short-term rental owner and manager since 2016, but also as the State of Kansas Airbnb Community Leader for Airbnb. I would first like to start by saying thank you so much to the city and to this body for doing the work that you've done to get us to this point. As I mentioned, I've been operating since 2016. At that time, and I'm mentioning this because of the conversation around delaying a decision a little bit longer,

while I understand that not everyone may be on the same page, not everyone's had the opportunity to do all of the research and reading, not everyone knows what an Airbnb is, but quite frankly that does not diminish the fact that there are Airbnb's operating and they have been operating illegally for a number of years, mine being a case in point. In 2016, I did contact the Sedgwick County offices. I contacted the City offices. I spoke to the State of Kansas, and I did all of my due diligence as a property owner and an investor here in my city where I was born and raised. I've lived here my whole life. I've done my due diligence. I feel like I've done the things that I needed to do to make sure that I was both protecting my neighborhood, myself and my investment. At that time, I was told that there were no policies, there was nothing to regulate, there was nothing to say what I could and couldn't do. The only thing that I was able to get was from the State of Kansas, and they at that time told me that the only thing that they're dealing with is two bedrooms or more and tax implications in terms of occupancy taxes, which we've paid tens of thousands of dollars in occupancy taxes for the properties that we own. We own four properties here in Wichita. Come back home, three-time boomerang, to my hometown to bring my skills, my talents and my dollars to this community where I love being and love living. Airbnb's policy on parties is pretty clear. I know that the City has done quite a bit of research on that in terms of party houses. They also have recommendations for cities, which I know that the City has been looking into. I would like to ask that this body please trust the work of your City staff, who have spent a painstaking number of hours doing stakeholder engagement. They have gone through the processes of bringing this forward to committees. They've gone to the District Advisory Boards. They're bringing it forward to you today, and I would really encourage you to not delay this decision longer than necessary, both for the residents who are seeking some support from the City in terms of the 500 or however many that are operating illegally, but also for us as homeowners. I'm not a business owner, I don't have an LLC, and I think that the way we can get in trouble with this issue is by overgeneralizing what things are and what things aren't. Not every Airbnb has problems. Not every Airbnb has shootings. I have long-term rentals and I have short-term rentals, and I can tell you that my short-term rentals are much cleaner, more attractive. I'm in there multiple times a week to keep the properties maintained. My long-term rental I had to spend \$60,000 renovating because people came in and trashed it. I know there are some concerns here from Commissioners today about the kids and their knocking on doors and doing other things. Again, how much is the concern that's here today in direct relationship to an Airbnb, or how much of this concern is just overall concern about the quality of life in your neighborhood? I would encourage you to consider those things. This is not a one-sided conversation and it shouldn't be a one-sided conversation.

FOX: Are you complying with seven-day stays, and is that possible to do?

REED: At the beginning, two years ago, when it became a pretty heated conversation and I took part in all of those advisory meetings with Crown Heights and other places, I did change it to seven days. That is not cost effective as an owner because people don't want to come and visit for seven or more days, generally speaking, and so I'm not compliant at the moment and I'm taking a risk obviously by saying that. I think there are a lot of other people out there that aren't compliant and may or may not be willing to come forward to you today and say so. The reason we're not compliant, again, is because it's been so many years since a policy has been needed but there's been no action taken, so I encourage you, please, take some action.

FOX: Is five days more reasonable?

REED: I wouldn't impose a day restriction on anyone who owns a property. Personally, I have a three-day minimum for weekends, but that's my own personal right as a property owner to ask that of my guests. I'm a super host, which means that you have to have a lot of really good reviews in a 4.9 or above to get that status with Airbnb, and, again, I was selected as a community leader for the entire state of Kansas. I would love to be engaged in this conversation. This is not the first time that I've asked to specifically be engaged in this conversation.

FOSTER: The short-term rental that operates right across from my house – for people who aren't familiar

with them – most of what I see, and I would be interested if you have similar renters, are either people with pets who want to be able to bring their pets with them when they come to visit our city or there are family reunions where instead of everybody showing up at one person's house, they rent a short-term rental and everybody drives half as far and has the family reunion in Wichita – that honestly accounts for probably three-quarters of – and business people who want a house instead of a motel.

REED: My personal experience, most of the people that come and stay with us, they're family, family members, they're meeting halfway – they're meeting someone from Texas, someone from Colorado, someone from Michigan – this is a central location. Contrary to popular belief, people do choose Wichita as a destination. The folks that live here might not see it that way, but people do choose Wichita – they love to come to Wichita, they love the welcoming nature of our city, they love being able to walk next door and talk to a very friendly neighbor, they love the idea that they can do something more affordable and more family orienteered than a hotel. We get a lot of not only family reunions – we get a lot of funerals. Unfortunately, that happens a lot during the winter. We get wedding guests who are here for weddings. We get people who are adopting babies who spend time with us. We get folks who are here for work, who are contractors. We had someone for six weeks who's now the Director of Marketing for the Wind Surge, that while she was looking for a property, she stayed in our home. I have countless stories. I had someone from 1953 who stayed in a property that I own that when she was a child, grew up there.

ALDRICH: The last thing I got to say is that I understand when things work and they work well for the good – I get that – but what about the rights of the other neighbors, the other property owners that have not experienced the same perfect situation that you have across the street or what you're dealing with, and that's what I'm talking about firsthand that I've seen. We got 400 and some odd houses over there and it's a lot of issues and that's what my concerns are. Not every Airbnb is in a perfect situation – you're going to get those 24-hour ones and you're going to get the ones that's going to pick up that social media thing and you're going to have some issues, and by the time PD gets there, it's over with.

REED: I think you might see that with long-term folks, too, who are just owner-occupied homes and you have issues in all kinds of homes. I'm in favor of regulation and legislation.

BLICK: So, basically, for your experience, you run it as a commercial business, like an LLC or an incorporation?

REED: No, sir, I don't. I file my taxes just like everyone else who has a long-term rental investment on their portfolio – don't have an LLC.

BLICK: Do you pay more in insurance because it's a rental? Does like your insurance company know that you have a rental?

REED: Yes.

BLICK: Because I know like the Ubers and the Lyfts and everything they have to pay more and their insurance knows that somebody else is being in there in that house because normally your insurance policy says, hey, if there's one person that lives in there versus five people that's there for a weekend.

FOX: Can you answer that question?

REED: I don't pay more necessarily in insurance than any other rental. Yes, my insurance company knows that all these are rentals and all of these are short-term rentals. One of them specifically, I had to go outside of my insurance company to insure separately, which is a concern that I have about the proposed legislation as well, specifically short-term insurance is very difficult to find. I have a company that I found only because

we have a pool, and that puts us as homeowners as a higher risk to have people in there using the pool, so we have a special insurance for the short-term rental for that home in particular.

FOX: I'd assume some of that's legislated through the framework that you promote your home, is that correct? So, Airbnb would also have rules for you, is that accurate?

REED: Airbnb doesn't have rules for homeowners.

FOX: Just ratings?

REED: Yes, and the ratings are done by guests, not Airbnb itself.

PATRICIA HILEMAN, 139 SOUTH FOUNTAIN, WICHITA: I just wanted to reiterate what you've heard from some of the other public speakers, some of them, is that we need the rules. We've been sort of operating in a wild west in our neighborhoods, and I hear the discomfort of the previous speaker saying you know I want the rules, I want something that says that what I'm doing is legal, because I really understand it's not right that people are forced to operate illegally, so let's put some rules. I wanted to say that Scott and his team have done, from my perspective as a neighborhood advocate, a really great job in putting rules together. Also, I've heard from Airbnb owners, generally, they appreciate as well. There's one little thing in there, the 50% of the homeowners that are adjacent having to protest in order for it to come to the MAPC or to come to a body to say no to – I would say that should be lower than 50% , that's just my input. And, then, further, I would ask that as a city and as a Planning Department and as you guys, that we look at – right now we're talking about 500 homes in Wichita – that's probably not College Hill has (inaudible) Crown Heights maybe have more than some – that's maybe just my gut feel, but as we do put rules around it, more people feel comfortable in investing in these homes and in buying these homes, we want to make sure as neighborhoods that we're not turning into an Airbnb Community. We need to have our homes for people who live here and we want our neighborhoods to be places where people do have neighbors, not renters. It is uncomfortable to live next to a renter sometimes. Most of the time, like the previous owner said, they're awesome, they're great. I've stayed in them myself, they're great, but it is a different vibe. You can't watch out for the stranger who pulls up with the moving van for your neighbor because that could very well be a renter. You can't call the cops on them because that's an Airbnb, so there's just a different vibe and it's not as neighborly, doesn't mean it's wrong necessarily, but we just need to be careful. Can we reevaluate yearly based on our numbers and our densities? Four on a block seems excessive, 10% of a neighborhood seems excessive, and those are just numbers I'm pulling out. Maybe Scott would have even better parameters but at some point, when densities get too high, you no longer have a neighborhood and I think that's a problem for Wichita's livability.

DEB SCIFRES-CUSHING, 2415 TIMBER CREEK COURT, WICHITA: I am an Airbnb owner. My question to the Committee and everyone that's been involved is around the conditional, the administrative approval, and then the protest at the 50% and then if it goes to a Conditional Use. I'd like more detail around if it would go to a Conditional Use hearing. What are the approved reasons that we that the property would not be approved to continue to run as an Airbnb? I have a home that is in a very nice neighborhood that we've owned for 30 years that we've done hundreds of thousands of dollars of improvements on and about the time we finished those improvements, we went to see a home at Harbor Isle and thought we kind of want to live on the lake, at least while we can, and so we bought a home at Harbor Isle. We still own this home, and our thoughts are we want to move back there when we retire and get to the point where we can't go up and down the stairs here. Our options were sell the house, that's not part of what we want to do, or rent the house. We also own some rental properties, and we were in the same position as the previous speaker where we got a one month deposit and we just recently spend a \$100,000 repairing a home that a full-time renter had destroyed, and so in our opinion this would be a great option for us to keep a home that we've owned for 30 years that is one of the top houses in the neighborhood that's been renting for not quite

two years that's had zero issues that brings in the same types of people that the previous owner just spoke about.

FOX: Excuse me, but you have the question then about what would support a Conditional Use if your neighbors protested the zone?

FRES-CUSHING: If my neighbors protested, and because there have been no issues, because I do have neighbors that would like to say I want this kind of person to live next door to me?

FOX: Scott, are you able to answer that general question? Excuse me, but your time is about up and I want to make sure you can get that answer.

WADLE: I guess the general answer would be that any Conditional Use is evaluated according to Golden Factors so that's something that we look for so if you do a quick Google search online, you'll see Golden Factors Wichita, you'll see our list of those come up or you can just check one of the zoning cases for the conditions.

J. JOHNSON: At this time, I'd like to make a motion that we defer until Planning brings a votable proposal to the Advanced Plans that we can review and make a recommendation to the MAPC.

GREENE seconded the motion.

FOX: I have motion to defer, allowing Planning enough time to provide a more votable proposal through Advanced Plans and a second from Commissioner Greene. Discussion.

FOSTER: I was going to ask staff if we do this deferral, approximately how much time would be appropriate for you to be able to answer the questions that have been raised, or is there no amount of time that would achieve that goal?

FOX: And the legal issues that are raised by RSCK – I think that's one, too.

WADLE: We're happy to go through that letter today. If you'd like to do that at an Advanced Plans, we can certainly do that, too. So far the things that I've heard that need to be addressed are answers to some of the comments that we received from the Realtors in their letter. What other changes or additions or clarifications?

FOX: I think I heard a lot of discussion of is regulation necessary reacting to a single kind of issue and then is there a portion of this that could be put forth more quickly to see if that would resolve some concerns like safety concerns for the neighborhoods and for those neighborhoods without HOA's there be some aspects there.

WADLE: And in terms of that first one about whether or not regulations are needed, we have developed this based on the feedback that we've received and also looking at other communities, so we would look to you to provide answers to us about whether or not this is a good fit for Wichita, so that's a dialogue that can take place in Advanced Plans, if you'd like.

FOX: And I believe there's been that kind of dialogue to a certain extent, so I don't know.

DOOL: We had an extensive discussion as we have here today about this and I would say, if we're going to defer this, I'd like to give Scott some specific things that we want to address here in the deferral.

DICKGRAFE: What I'm hearing is you guys are done with options. You want to hear what we recommend and that's what we recommend, and you want to be done. I think we know what the Realtor's concerns are. I think we heard Mr. Blick's concerns about inspections. Those are two very different things. I think we can get somewhere that would accommodate both of those concerns, but I think you give us a couple weeks and you tell us to come back with our final shot and we're done, because you're tired. I've been working on this for three years and I'm tired. I'm going to retire in three more years so we've got to get this done.

J. JOHNSON: I'm going to be a little more generous and amend my motion for 30 days.

FOX: We need a meeting date.

WADLE: If I could, what I'd like to offer is that Advanced Plans typically meets the morning of an MAPC meeting so you would have the option of deferring it for two weeks, which would require the chairperson to call the special meeting of Advanced Plans, or you could defer it until next month's Advanced Plans meeting.

FOX: Which would be May 10.

J. JOHNSON: That's my motion.

FOX: To defer to May 10, and all members would be invited to Advanced Plans to hear the discussion perhaps?

J. JOHNSON: Absolutely.

FOX: And we would receive a transcript of this morning's Advanced Plans meeting as well for a little additional discussion information.

DOOL: I would still like to hear some specifics on what we're looking for in this deferral? Why are we deferring it? Is there questions that were unanswered today? What are we asking staff to come back to us with?

DICKGRAFE: I think there's been a consensus that we need to address some of the concerns of the Realtor's Association. I think some of those can be explained and don't need to be changed necessarily. I also think that, and I'm just going to step all over Scott because he knows I'm kind of a strong personality – I think we need to figure out whether this is the plan for Conditional Use, an Administrative Adjustment, does staff think that they can live with that, and then if that's not okay, then we'll go back, but I think we have to come back with our best and last offer.

WADLE: I kind of thought we were there.

DICKGRAFE: Yeah, but I think we can work on it.

FOSTER: If you look at the letter from the Realtor's, the one that actually stood out to me was whether the Fourth Amendment and the legal opinion on inspections, I think that concerns me a little.

DICKGRAFE: I think we can do it the way that it's written. Do I think that there are better ways to get where we want to be, perhaps, and certainly this issue could be handled a thousand different ways by cities – whether you inspect them right before they start, which is what Mr. Blick said, whether you do it based on a complaint, whether they're just exterior, and I think that we can probably come up with a compromise and at least get this thing started because we've got to start somewhere.

MCKAY: My only concern is the fact that like for licensing, there's been a number of questions today about license into the process, the notification area for the licensing what it might be – that's one issue that we could into consideration that needs to be up front because the lady back here said we need to have some kind of rules, we need to know if they're licensed or not, and if we're going to have a license, this is the procedure we need to have for licensing.

FOSTER: I read through this whole pile of papers and I thought it was fairly clear, but the question on the table is do we defer for the meeting a month from now and I think clearly there's enough questions from enough people that that would be a good idea. Are we ready to call a vote on the motion to defer?

FOX: The motion is to defer for a month, which would be to Thursday, May 11th Advanced Plans meeting (I was looking at the wrong year), which begins at 10:00 in this room. And then I wonder if there could be votes on smaller portions of it so that we could get to agreement on pieces rather than trying to vote on the whole package at once potential when we get to that date

MOTION: To defer to May 11, 2023 Advanced Plans meeting to have Planning provide an option that has more details figured out.

J. JOHNSON moved, **GREENE** seconded the motion, and it carried (14-0).

5. NON-PUBLIC HEARING ITEMS

- 5.1 **DER2023-00007:** Special review of a proposed amendment to CON2012-00021 to determine if an application can be filed less than one year after being denied by MAPC on property located at 8558 W 21st Street North.

BACKGROUND: On October 6, 2022, the Metropolitan Area Planning Commission considered case number CON2022-00033, which was a request to amend Conditional Use CON2012-00021 and CU-523 to permit outdoor entertainment and modify the hours of operation for two parcels located at 8558 West 21st Street North. The parcels are zoned LC Limited Commercial District and are developed with a cocktail and smoking lounge known as the Humidor (Suite 100) and a restaurant/bar known as Dudley's (Suite 500). The action of the MAPC was to deny the request. The applicant did not appeal the MAPC decision to City Council.

Section V-D.11 of the Unified Zoning Code (UZY) states, *"In the event that the final action on a Conditional Use application is that it be denied, or if the applicant withdraws his or her application after a public hearing by the Planning Commission, a similar application shall not be refiled for one year from the latest advertised public hearing date on said application. The Planning Commission may permit a refiling of said application after six months of the latest advertised public hearing date when it determines that significant physical, economic or land use changes have taken place within the immediate vicinity, or a significant zoning regulations text change has been adopted, or when the application is for a different use than the original request. The applicant shall submit a statement in detail setting out those changes that the applicant deems significant and upon which the applicant relies for refiling the original application."*

The applicant submitted the attached statement detailing the changes to the application that they deem significant for which they would like to file a similar application after six months of the original application being denied.

ANALYSIS:

BLICK: Just for clarification – JR, the applicant was saying that there’s two-foot from the street down into the ditch but it goes all the way down to the ground – wherever the fence is it has to be down to the ground?

COX: Correct.

FOSTER: Even if it causes drainage issues?

COX: I don’t know that I’m prepared to answer that. I’m not sure I’ve seen a fence cause a drainage issue, but under the zoning code, solid screening should be solid screening – it should be from the ground to the top of the fence, whatever height that might be. There could be some situations where a fence like this might work but there might be a berm in front of it – the idea is solid screening. I think at some point here you could probably look in there and see in.

MILES: This fence is not down into the ditch, it’s up on the level ground. The ditch starts after that so having it all the way up to the ground, it’s never been all the way to the ground, but I can’t see that it caused drainage problems because it’s not down in the ditch, it’s on level ground above the ditch.

FOSTER: I actually have a question for the applicant. Do you own the property to the west?

ALVARADO: I own the property to the east, which is this property.

FOSTER: So, you do not own the property to the west where someone has said that all the dead equipment that was on this lot has been moved to the lot to the west?

ALVARADO: No ma’am.

ALDRICH: If this is approved, is there a timeframe that the applicant has to have the screening completed?

EBACH-FREUND: There is not. This is not a Conditional Use where you know there are conditions specifically stating that the site plan needs to be turned in within a certain period of time. Again, I think I would probably defer to JR’s previous answer and then it would be on a complaint basis so if we realized that this was approved and they had not installed the appropriate screening and landscaping, then we would go from that point.

ALDRICH: So, it could be a year or two years before it gets screened?

COX: I think the applicant in the room with us is hearing this conversation, he’s aware that that’s a violation to not have the screening so, no, it won’t go a year or two.

FOSTER: What happens if we don’t approve this, the remaining land to the south is already zoned industrial so it is going to continue being used the way it’s used basically, correct?

EBACH-FREUND: That is correct, yes.

FOSTER: I would move to approve per staff comments.

MOTION: To approve subject to staff recommendation.

FOSTER moved, **DOOL** seconded the motion, and it carried (11-1), **MILES** opposed.

4.8 DER2023-00006: Wichita-Sedgwick County Unified Zoning Code (UZC) amendment to include

Short-Term Rental Businesses.

J. JOHNSON: I'd like to make a motion that the MAPC approve the recommendation of Advanced Plans.

MILES seconded the motion.

FOSTER: For those of us who aren't on Advanced Plans, we have no idea what that might be.

FOX: And actually the motion this morning of Advanced Plans, Commissioner Dool, was to bring this to the full MAPC for review and discussion and public hearing. I have a motion and a second that they accept the recommendation of Advanced Plans.

BLICK: Was there quite a bit of changes that was on the Advanced Plans that was from what we got presented at the previous?

DOOL: If we accept this motion that was made from Advanced Plans – what we approved was to bring it to the Commission – so you can vote on it, but we're still going to hear it.

FOX: Advanced Plans, I listened and I understood they believe the full Commission should hear some of the public testimony regarding the issues. Does that make sense? Is that accurate? We have to vote on the motion.

BLICK: If there's a substitute, the only substitute is the denial, right? Not to hear it?

J. JOHNSON: I'd like to withdraw my motion.

MILES: I'll withdraw my second then.

FOX: We've withdrawn the motion and the second, and so we will hear this item.

MCKAY: Scott, have we handed out the stuff you gave us this morning?

SCOTT WADLE, PLANNING DIRECTOR: No, sir. We've got two things – number one is we have a staff report for the zoning and the MAPC policy – it's one staff report for those two items, and then we have a separate staff report, which is for the licensing and the nuisance party houses, which is the second one, and then there's a third one, which was presented in Advanced Plans that's a summary of the changes that have occurred since the MAPC meeting a couple weeks ago.

MCKAY: The reason why the motion was made this morning is because we did have some changes regardless of how menial they might've been, these folks that weren't there haven't gotten any of the paperwork to be able to even study it, and then you're asking to make a motion to approve or disapprove.

WADLE: I can't speak to the motion, but in terms of the materials that were distributed, it's true, they were distributed after the packets were mailed out initially – those are the two agenda items that you should have received at least electronically, and I saw that there are some paper versions, so I assume that those got distributed as well, and I'm more than happy to take you through.

GREENE: I think it was Monday that we got the electronic copies. I did have a question on those electronic copies. There are items highlighted in yellow (inaudible).

WADLE: In the zoning portion and also in the licensing – in the licensing those are highlighted changes that occurred since the MAPC meeting last week. For the zoning, those highlights were a working copy, so it's a way that we're tracking changes over time, so not necessarily changes that occurred since the last MAPC meeting, but changes that have occurred over time with the document. The summary page will be very helpful. I'm more than happy to walk you through that, and if you choose to continue and receive the presentation, at the end if you don't feel comfortable, you don't feel like you've gotten the correct information that you need to make a decision, you can always defer it – you've always got that option as well.

FOX: I'm a little stuck. Are we going to wait for the handout you can quickly see the overview of changes since we saw this most recently?

WADLE: If it is possible – what I'd like to do is take you through the PowerPoints that I have for this particular item and then I would like to read through the handout with you. I think that the PowerPoint will give you a good background on it, just a refresher on where we've been. The handout then we'll go point by point on what some of the changes have been. (Preceded with the PowerPoint presentation and staff report for zoning changes.)

BLICK: I know that when notifications go out there's property owners that are renters that live in those houses, so when you send them out, they could go to California and then never gets back to the person that's actually living (inaudible). Have you guys ever thought about sending one to the actual address also?

WADLE: We have. That has come up as part of Advanced Plans discussions. It's not been on a recent agenda – I think it's been a couple months since that discussion has come up, but that's been a discussion not just not in particular for short-term rentals but rather for all zoning notifications, so that conversation is not carried forward, but I do want to let you know that that conversation has been happening.

ALDRICH: I'm curious on that number of 50% of the owners. Why is it 50%? Why is it not 40% or 30%?

WADLE: That was a discussion that happened in staff meetings. We felt like 50% showed that there's a majority of the property owners who either are concerned about it or not in agreement with it so simply because of the fact that it gets to a simple majority – that's why we established it at that percentage. We're certainly open to thoughts and ideas about changes if needed.

ALDRICH: What my concerns are on the percentage is that when you look at the notification boundary if you will with the adjoining properties that really limits that notification area considerably. So, if you have somebody that's 200 foot away or whatever, they're not going to get notified because they're not in that very tight notification boundary but yet you're still looking at 50%. I think if that's going to happen, if you're going to keep that tight of a notification area, I think that percentage should come down. That's just my thoughts.

WADLE preceded with presentation.

ALDRICH: If you have two owners on the property, one of them fails to sign, then that protest will null and void, correct?

WADLE: Correct. It is not a valid protest at that point. And that is consistent with how protests are handled for other zoning cases.

BLICK: And then notifications, right now you notify the HOAs or the neighborhood associations. Are you going to continue doing that?

WADLE: We will for other cases but not for this one. This one is just to the property owners that are abutting and contiguous. At least that's how it's proposed.

WADLE preceded with presentation.

MCKAY: If I own three houses, there's three votes or one vote?

WADLE: Counts as one vote.

GREENE: In this particular case, if he owns three houses, it counts as one vote – are there three properties or just one property?

WADLE: It counts as one vote because we're doing it based on the total number of owners.

MCKAY: Three abutting properties owned by the same person.

BLICK: Also includes the property that's in question, right?

WADLE: It does not. So, just like the current protests, we do not include the applicant property, the subject site. (Preceded with presentation)

MCKAY: Scott, comment on how homeowners associations handle this.

WADLE: Homeowners associations provide another level of regulations or they can and that is really a contract between private parties so they can choose to prohibit short-term rentals if they want to. These proposed changes to the zoning code would not impact HOA covenants so it doesn't undo anything that's been done to date and it does not prohibit or restrict HOAs from having those types of provisions in their covenants in the future.

ALDRICH: We have what 500 to 600 Airbnb's in operation right now, is there any thought of a cap of how many is going to be allowed, whether it's going to be 1,000 or 2,000?

WADLE: There are some communities that do it that way. In the feedback that we've received, we have not heard that that's a direction that people wish to pursue as of yet. It doesn't mean that it couldn't be done, but we've not heard feedback that led us to move in that direction.

ALDRICH: Shouldn't that be something that's thought about now since we're in the early stages of looking at doing something because if you have say an area that you got a five or six block area but all of a sudden every single one of them wants to do an Airbnb they would be allowed to do that.

WADLE: I think there's two things that I would point out to that. Number one is that as the MAPC, we look to you to tell us, indicate to us, about what a good fit is for our community and what isn't, so we're looking to you for the guidance, so I'm excited to see what your guidance is. The second part is that we initially did hear comments that there were concerns about clustering of short-term rentals and the effects that having a lot of them in one small area would have. We've done this a couple different ways and I guess before I get there, the first version that we had would have allowed them by right throughout the city without the need for zoning process. We took that out for public comment. We received comments that people were concerned because they wanted to be able to have feedback on whether or not a short-term rental next door to them was an appropriate use and so because of that, we drafted up the zoning process largely very similar to what you see today but with that we included a 600-foot buffer distance between short-term rentals. That

provision was taken out to the District Advisory Boards and we heard some comments in support but a majority of the comments that we heard were not in favor of that. Also, at the City Council level, we heard questions about whether or not that was a good fit for Wichita and so that is how we have arrived at the proposal was through that iterative process of here's an idea, here's an idea, and getting feedback on it.

FOX: Okay, that ends questioning on this part. I believe we need to hear the second part in order to make a decision on the first part. Yes or not?

WADLE: Not entirely. The first staff report, the first item, is on zoning and the policy. In order for changes to be made, you have to approve it, otherwise it doesn't go anywhere. What I would highlight to you, and I think what you've stressed during your comments are, these are very connected. Now, the next one that you'll hear about it is just advisory – you're only providing a recommendation. But if you approve the zoning, and since your advisory the other one, it's a little less complex because the City Council can elect to hear it whether or not they want to, but the first one could have impacts on how the city moves forward, so if you don't approve the zoning one, it really changes the menu of options.

FOSTER: (Referring to the slide with four recommended actions) Are we at the point we're making a motion to take those four actions is appropriate or is there more you want to say before we do that?

WADLE: Obviously, public comments and questions and discussion, but the staff recommendation at this point is that you make these four actions today, if you're comfortable doing that.

FOX: I think we would then call for public comment because you're basically the applicant. Do we have members of the public in chambers who would like to make comments on the zoning and MAPC policy changes?

JACK PATTON, 337 SOUTH RUTAN, WICHITA: As to the changing of the zone, I'm sure there's legal issues on that, but that seems to be kind of uncomfortable because it's hard to change the zoning back if there are screw-ups and that's part of the big problem here is you got people in the neighborhood that really shouldn't be there. How do you get rid of them, and since the zoning stays with the property and not the applicant that just increases problems for the neighbors and the neighborhood? I'm sure everybody's familiar with the big incident that started all of this so I won't go into that. The other issue I have is with the sign or the lack of signs. I spoke earlier about it was being hidden. I guess I need to change by verbiage on that. I'll go with restricting, concealing, or failing to notify or keeping secret. If you're restricting or concealing the notification of the neighborhood and the residents in the area as to what's going on, the question becomes why and who are you concealing it for or who's wanting this concealed? And why is it a special exemption for Airbnb's? I can go on websites, the internet, and find houses for sale that are empty, fully furnished, for rent, and any Airbnb that's already on the website, so the excuse of fear of people breaking in is offset by the desire of those who are going to profit from this, the Airbnb and the realtors, is kind of offset by wanting to keep any persons who are concerned about this, keeping all the information under the radar so to speak. Based on past experiences in inspection, military and personal life, if you think you have to be secretive about your business, maybe you shouldn't be doing that business.

JASON KRAUS, 243 NORTH PINECREST, WICHITA: A couple of things that I would like to propose that you consider as you consider this – one, I would very much like to see us keep the seven day limit in place during the intervening period from whenever the legislation as it's passed is passed until licensure and approval is required. I would like to see that rather than have us with a year of Wild West unlicensed renting, coming and going, possible more party houses popping up. I'd also like to have any past violations of our current laws on the books or general party house and nuisance items to count against those that are trying to apply for these processes. In my neighborhood, I have one property owner that I believe to be negligent – she's had the police called three times on properties that are short-term rental properties and

she's not in compliance with the law as she generally operates right now. The signage has been spoken about. I think at a minimum for any new properties that are not currently operating that might not be grandfathered in, they're not listed on Airbnb yet because that would be against the law in this – I think they should be subject to signage. Anything grandfathered as it goes through that, maybe that might be accepted, but new properties going forward, signage should be a requirement, we need to notify the neighborhoods. Also, a couple of other things. In the current regulations as it's at, it's kind of a three strikes and you're out situation on licensure, three strikes is probably too many. I think two major events that are causes of misdemeanor faults ought to be enough for you to be stripped of your licensure to operate that property safely in a neighborhood, that's two very egregious violations in a year. I think asking for more than that is inviting negligence. I also would like to see us move that approval threshold down to 30% to avoid situations where we have kind of odd numbers you know that hits us where 40% approval or 40% doesn't allow for people that are good neighbors to get approval of their neighbors and those that have issues where people next door to them bring them to you to discuss what those issues are as we work towards approval. And I'd love to see a 21-day admin permit approval protest window, but I understand that that might be already locked into the books, we may not be able to move that.

GREENE: Can you define egregious?

KRAUS: Egregious events that we've had in my neighborhood have been egging's – eggs thrown over back fences from one Airbnb property into another. I've also had airsoft and bb guns being discharged towards my house from an Airbnb house behind me. We've had of course the shooting, the event that started this whole process on April 11, 2021, where Elijah was killed out my back window basically. Those are three major ones that we've had police called. We've had other events where people are driving aggressively through the neighborhood, screeching tires at many, many hours of the day and night, driving wrong way up one-way streets, in part because they're not familiar with the neighborhood but then doing it at some speed, that's not something that invites a lot of neighborly attention.

GREENE: So, you're basically just saying that when police are called out, is that what you...

KRAUS: I would like to see police being called as something that is a very, very negative impactor to someone's ability to operate one of these properties in an otherwise residential neighborhood. These are commercial interests. If we had police called at a commercial interest three and four times a year, we might be a little concerned about the operation of that business.

BLICK: When you were talking about signage, are you just talking about the signage temporarily or a permanent signage so then there's notification or safety that people will know that when they're showing up at night, because most of these people are not from this area that are coming in, as signage out in front of the house that lets them know that hey this is a house that they're trying to knock on some door trying to get into a house or are you talking just temporary?

KRAUS: I believe more the temporary development application signage should absolutely be required for people applying that are not operating currently. I don't want to dictate signage for an operating and approved Airbnb just because that is really on the onus of the operator, the owner, to get the proper instructions to their guests so that they can safely get to the property. Now, that being said, somebody who's trying to break into the wrong house because that owner didn't operate and didn't communicate that information properly, that's something else to consider is an egregious violation that I would consider a safety violation to our neighborhoods – again, commercial traffic in a residential neighborhood.

EMILY ALVAREZ, 2456 WEST SAINT LOUIS STREET, WICHITA: I wanted to speak on this topic. I wasn't prepared for this necessarily but I'll do my best. First of all, I want to say I'm sorry that other people are having negative impacts of negligent Airbnb owners. I am not one of those, so I'd just like to

speak on that. I take pride in the homes that I run. I take safety as my number one priority of my guests. I have ring cameras out front. We have lights on whenever it's dark. I have it automated so the minute the sun goes down, my lights come on – that safety is number one for me. I communicate with my neighbors, they know that we're Airbnb's, they have my phone number to make sure they can reach out to me if there's any issues. I've been a super host and we've been in operation long enough to secure that title with Airbnb, and with that, that is approved by our guests. They have a rating system. If my house was not taken care of, if it wasn't a good representation of the neighborhood, I would hear about it and then people wouldn't rent my property, so that's something that I definitely take into consideration. The other thing about our Airbnb's is that – I'm a newer resident of Wichita and married to a born and bred Wichitan but you know I've come around to being a Wichitan myself – it's important for me to not only make this city better but to make our neighborhood better, and that's something that again, we take immense pride on. It's also the fact that when my family came in from out of town for our wedding here to downtown Wichita, this is where my family stayed. A lot of our guests are friends and family, they're coming for weddings and funerals. We allow with our properties – it's an affordable option for people to come with their kids, with their families. They have small gatherings, but we do not allow parties. I know some people are negligent, but that's not the case for us. In addition to that, sometimes we do rent out from multiple months at a time and we've had longer term guests, three to six months for people that are working in construction, and even right now we have a nurse that is here with her family – her two kids, her two dogs, her husband – all moved to town. That's something in terms of signage I would not want signage in my yard because it's a safety issue for the people that are moving in. We have family with young kids there so that would be my concern about the signage. I understand that people want to know where Airbnb's are. To me, that's a personal communication thing and that's something that we do, so I just wanted to represent that as well.

FOX: The signage we're talking about is to notify the people living around the property in question that an application for zoning change has been filed so that wouldn't be a permanent sign to say that is an Airbnb but rather there's a zoning application for this property that's temporary prior to a hearing this like so that folks know something's changing and can look into what that change is.

ALVAREZ: And then once the permit?

FOX: Once the zoning change would occur or the administrative permit was issued, then there would be no signage identifying. Would you be opposed to the signage to let people know a zoning change was happening at your property? Do you see any concern about that?

ALVAREZ: I would be interested to see how that works for like our property right now. We have someone in there through July, she's a travel nurse, she's here in town – would I be required to put a sign out?

FOX: That there was going to be a zoning change on that property, yes.

ALVAREZ: That would just be my concern.

FOX: But there would be a grandfathering for the first year, so your timing of the administrative permit could be made such that it wasn't occupied at the time, potentially.

ALVAREZ: Perfect.

ALDRICH: Even though that you're going to be grandfathered in if this passes for a year, if you were a new applicant, for example, would you have any restrictions or any concerns about notifying your other neighbors about what you're looking at doing or would you just rather not notify them?

ALVAREZ: For me, I don't plan on keeping secrets, that's not the kind of business I want to run, and to me, this is a business – this is how I'm making my living here in Wichita – is by providing hospitality and that's the way I see it – you're going to come to my city, I'm going to give you a list of recommendations and all my favorite restaurants, so to me, it's not a secret. I'm not trying to hide anything. I don't have any major concerns like if we decide to open another Airbnb and this passes, I'm assuming I would go through that process as someone new for the next property, right? I don't have any concerns about notifying people, but it's also like what we talked about a little bit earlier, a lot of the neighbors in the neighborhoods I pick because when I go to buy a house, I don't want to be an HOA – there's other restrictions and we understand that people that are purchasing houses in HOAs have different expectations, so that's not a property I would purchase first and foremost. But, the properties that we would be grandfathered in, most of our neighbors are rentals like long-term renters and often decades-long renters and the condition of the homes to be perfectly frank are making my Airbnb look bad – those are the houses that aren't being taken care of – those are when you say you're going to be mailing that letter out of state, that property has not been seen by the owner in probably a long time because they are in bad condition – those are the houses that are not being taken care of – those are people that are not, in my view, representing the neighborhood well and of course that's just my case. I don't represent all 500 Airbnb's in town, but for us, yeah, you can notify them, but it's not going to be the people living there.

WARREN: I'm going to make a comment here because it keeps coming up and I just keep biting my tongue. I'm opposed to putting up the signage on this because not only are you inviting the neighbors – you're inviting the world – people from all over are going to see that. Do we really want to hear a testimony from people that live in other neighborhoods – a block, 10 blocks, half a mile away – to come in and talk about that? So, if we're not finding the people that are directly around the property and we establish that zone, those are the ones that I want to hear from, and beyond that I don't want to. I don't think it's anybody else's business what I'm doing with that.

LONNIE BARNES, 2924 NORTH TERRACE DRIVE, WICHITA: I've been listening here and I'm kind of torn both ways on this. I think there should be something that associates Airbnb's with the surroundings in which the people are coming for. It's a reason people come and stay at the hotels and the locations and most times in relationship to the event or wherever they're trying to attend and so I think there should be some kind of correlation that shows where we put the Airbnb's and where they are. I understand the part about homeowners associations being able to put more teeth into it, but I think something should be given to the neighborhood associations as well. What I see and hear, a lot of neighborhood associations have changed from homeowners that used to be 90% homeowners are now 90% rental properties in here – you've changed the dynamics in just the price value of the homes, so they need some consideration. I think notification needs to be given to the neighborhood associations to let them know what's coming at them and how much of it's coming at them and where these things are at. I get a little torn about that, but I do realize that there needs to be other options for property that's around events, things of this nature that they should be able to do something with their properties.

BRIAN ALVAREZ, 2456 WEST SAINT LOUIS STREET, WICHITA: Me and my dad own Airbnb's. We've owned short-term rentals since 2017. I'm born and raised in Wichita. We have one in Orlando, Florida, Clermont to be exact, and West Palm Beach, and also recently in Denver, Colorado. Emily's my wife and she said a lot of what I was going to say. Basically what I was saying is we go off of reviews, everything's reviews, so you stay to Airbnb and if your place sucks, the people will tell you it sucks. If it's a bad neighborhood, they'll tell you it's a bad neighborhood. It brings your score down. Airbnb will get to the point where it suspends you or even terminates you if you're below like a 3.5. Five star is an A, four star is okay. A four for us is bad since you want a five. We have six in town – we have 4.91, 4.88, 4.92 and 4.93. Living in the area of Delano and Sunflower district, we've actually brought up the area, we've cleaned it up. Like she said, the long-term tenants next door and around that area don't take care of their places. I feel like we've brought value to the places and made it better to be honest – more lights in the neighborhoods

and it's a little safer, too. We have the privilege of talking to our neighbors because we like to be open about it. I know not everyone is and I'm all for putting in for a license. In West Palm Beach, they have a license that they do online and then if you have complaints, you can look up databases who has Airbnb's and short-term rentals, you can look that up online, and if you want to complain on a property, you can. So that's something done online, so I think that'd be something to think about. I think we're really strict on the zoning here, just to give you a heads up. Other places, just say Orlando, it's Lake County, we have one set of rules they have a tax that they've agreed with the Airbnb, we're going to charge an extra 3.4%. In West Palm Beach, they have I think it's \$225 a year, I think the same is here that you're proposing, and also they have an inspector that comes out at least one time, they can come up to two times a year, so I think that's something that we should think about. I know I saw it on the notes, I think that's great, but I just think the zoning, and like Emily said about the people saying if my neighbors are going to decide that doesn't take care of the property that has their grass three foot high and is going to decide on my Airbnb when I cut the grass and spend a lot of money on it, I don't really agree with that, or the owners that don't care about these places – that's something to like about as well. Like I said, I'm from Wichita, I love Wichita, I promote Wichita, and I really hope that you guys come up with something that's like on par, not too detailed. I really do think that we should have license a 100% so the stuff in Crown Heights doesn't happen again, but it's going to happen regardless whether you're at a hotel or Airbnb or any other place that you're renting from.

BLICK: At these other locations that you have, do they have signage or sticker on a door so law enforcement knows or anybody like that or anything?

ALVAREZ: No. In Orlando, Clermont, specifically, Lake County, what they do is you get the license and you have to place it inside the door, kind of like a hotel or like hotel rooms have it, but it has my name on it, the owner's name, and when you last did your license, and then it'll have a county or whatever number to report anything. You have to replace it obviously every year. There's nothing outside – it has to be inside the door.

TRISH HILEMAN, 139 SOUTH FOUNTAIN, WICHITA: I was here for the Advanced Planning meeting and so have had a little bit of time to like think through the process and the stuff and also actually talk to some other community members in the meantime and as I've been doing that I have just sort of consolidated some ideas thinking that having the process really be not so much zoning but having it be really focused on licensing is really, really important. So for why, because licensing if you have a problem property if you have a problem owner then the neighbors can have input yearly into whether that is stopped or allowed to continue. If zoning gets changed that is in perpetuity and so you know that again can change the nature of a neighborhood if the majority of the properties are zoned for business versus just residential I think you could see long-term issues, Also, we don't know, this is all new stuff, this whole Airbnb, and so we don't what 10 years down the road is going to look like, and so having zoning change and again be permanent, I think decreases flexibility for our city, and if we have a yearly licensing process, we can be more flexible with how things are going to have to zig and zag and change that would require from what the conversations that I had after the Advanced Planning meeting, a board that would be established to take the licensing protest submissions or whatever, so if in the licensing process, if the neighbors protest, then there would need to be a board established that would hear those protests, but that would need to be a board, not the MAPC, which I think you guys are pretty busy if I'm understanding things correctly, and so having that not on your plate seems like real wisdom, plus it could be a separate group that has more representation from Airbnb owners, from neighborhoods, from this kind of stuff, having that kind of process I think could be really important and pretty darn doable. I think most of the things that are in the zoning changes can be just switched right into the licensing procedures because most of the stuff that staff has thought of are really thoughtful and really important to get implemented and having a process is really important so that people can operate their businesses legally is really important.

BLICK: With doing this as an administrative permit or adjustment, would it be a layer that's on GIS mapping that would actually identify that property as?

JR COX, ZONING ADMINISTRATOR: The answer should be yes, it's going to be a zoning case or an administrative permit. I mean, if you open up GIS, you should be able to see it if the case tracking is on. Whether it's a separate layer identifying just STRs, I'm not certain that that's going to be the case. It will just like any other zoning case.

BLICK: But you could definitely find it that way if you wanted to know that, hey, was this an Airbnb in your neighborhood, then that'd be a way to find it too?

COX: You would go to the zoning map, find that property that you're interested in, and then follow that case link to see what the case is because it could be any number of other cases, but yes.

FOX: And again, if a zoning change were made, the person wanting to run the Airbnb or short-term rental would have to apply for a license within the 12-month period – licensure being a separate issue – but once the property zoned, anyone who purchased that property subsequently could operate it with no further action, they would still have to apply for a license but that doesn't require notification or public oversight or input.

MCKAY: Scott, you're saying that without zoning, this issue can't go forward, is that correct?

WADLE: No, not necessarily. Without the zoning, so if you say, hey, this is the wrong approach, we need to do something different, or you say we don't even want to change the zoning, the challenge that we would run into is that the zoning code currently prohibits short-term rental unless you're going to make it be a stay of seven days or more, so we've still got a challenge with the zoning and how a lot of these are being operated in the community so that that would be the issue that would be confronting us.

MCKAY: Based on what you're saying then, seven days is the key, but if I say three and a half days or something to that effect, and then amend the zoning code based upon that, could you do it by right?

WADLE: We looked at that approach early on in the process and the feedback that we got is that neighbors wanted to be able to have input on whether or not a short-term rental was an appropriate use nearby them, so that's why we have structured the zoning process the way that we have, and so that's how we've arrived here.

FOX: And the licensure is not location specific, so if we relied on licensure to govern this matter, then the licensure could be used at any property, again without notification. Can you help me understand that?

WADLE: We haven't covered the licensing yet, but that's in the next item. Licensing is per the dwelling unit, so if a dwelling unit is being used as a short-term rental, it is a license for that particular unit. A duplex, for instance, could have two licenses for that duplex, one for each dwelling unit.

FOX: But the problem is the licensure process currently would have no oversight process or opportunity for public input until the license is granted and then complaints?

WADLE: That is correct in that there's no mechanism for notification or receiving a public comment as part of the licensing process as currently drafted.

J. JOHNSON: Why are there three to 500 of these still being operated? Have we not done anything as a city?

WADLE: Yes. There have been enforcement actions taken where we have received complaints, so again, our enforcement is done on a complaint basis. Last year, I believe, we were somewhere in between 20 and 30 complaints. Of those, what we do is, we serve them notice, they have an opportunity to take corrective action, many of them did, they advertised just for seven days, some of them did not, and at that point, we can't force them to come into compliance – what we do is we take them to court. Now, since this process has been going on, we have halted those court proceedings with taking them to court to see how this gets resolved in terms of the regulation process.

ALDRICH: What would prevent an operator or an owner of an Airbnb advertising for seven or eight or nine days but actually they're only renting it out for three or four days?

WADLE: I think that that would come down to the platform logistics in terms of if you're advertising it for seven days, I don't believe that the system will allow you then to, it depends on how you do it, but I think you set it up so that it only allows you to book it for seven-day stays. Now that is not to say that there aren't Airbnb operators who are operating today without that seven-day restriction. You can look up online there are a number of them.

ALDRICH: But let's say they advertise it for seven says, they book it for seven days or eight days or nine days, and then their tenants after three or four days say, we're done and they bail out, what happens?

WADLE: Certainly that could happen.

ALDRICH: So, if that's the case, why do we need to even go through this whole process?

WADLE: Well, I think that we're receiving feedback from owners and operators, especially of short-term rentals, to say that the current regulations don't fit with either the way that they're operating or also with market demand.

DOOL: Most of them are operating illegally right now, and I think some action needs to be taken to correct that.

FOSTER: The regulations we have are obsolete and they don't fit current conditions, current market or current reality, and they need to be updated, and I think this is a very good process for updating them. Is there more discussion or can I make a motion? Are we ready yet?

FOX: Make a motion.

FOSTER: I would like to move that MAPC takes the recommended four steps from staff to initiate and approve a zoning code amendment to recommend that the governing body adopt the amendments and that we amend the MAPC policy 20.

BLICK: I would second that if I could add discussion to that. I would prefer to see some additional notification to the HOAs and the neighborhood associations. Right now they already send notification out for every one of these cases to the neighborhood associations and HOAs. They're the ones who are actually dealing with this problem and then they usually go and give them to code enforcement when they get so many of these phone calls because most people don't know the process of going through code enforcement they don't get a vote but they at least get some type of notification that these are in their area.

FOSTER: So, was that a substitute motion?

BLICK: No, I just asked to see if you would add that to your motion of adding HOAs and neighborhood associations to be notified.

FOSTER: I don't know that I'm personally inclined to because that truly complicates the process a great deal, adds a whole lot more people to the mix of people who are not going to be part of the protest percentage but are liable to show up in a meeting and have something to say about it even through its 10 blocks away from them.

WARREN: I wouldn't change my second because I don't want to give more authority to homeowners associations with what they've got already.

BLICK: Right now as is, they notify one person whoever is on record. I'm president of a neighborhood association and I get every notification that's in the whole southwest part of Wichita. It's just one person that gets that notification as a neighborhood association – they send it out to them right now for every single case that's in that area. I think that they're the ones who are usually dealing with these situations, they should at least be notified. They don't get a vote, but they can still be notified, just like how it is now, they still get notified but without no votes.

FOSTER: I'm not willing to change my motion, so I think if you want to include that in what we're voting on, you will need to make a substitute motion and get a second and we have to discuss it separately.

MCKAY: Well, I can sit here and we've talked. I've had meetings with Scott to me there's enough in here that we don't know what's going on. I agree that we're behind on times with what needs to be going on. I think a timeline for getting it done is fine. Licensure is probably not the key thing which is why I keep asking about zoning. We need to maybe have a committee within this group, work with staff and say, what can we do to make it go forward, because homeowners associations are altogether different than neighborhood associations. Homeowners associations can make their own rules. Neighborhood associations can't, it's just a sounding board, so that's one of the clarifications that needs to be straightened out. We've listened to people today testify about the work they do and they want help from us. I don't know that we shouldn't take a little bit of time. I know everybody said, well, we've been working on this for two years. We've not been working on it for two years – staff has been working on it for two years. I'm having a tough time with something being, pardon my expression, shoved down my throat. How many questions have been asked here today that we don't know and we're going to pass legislation, especially the zoning that's going to go on with the property for infinity?

WARREN: The problem we got with that was that no matter what we come up with, we won't know what we've got until you enact it. We've got something that I think that we can modify as we learn as we go, but I think this search for perfect is going to get in the way of the good and I think we've got something that's good, that can work and get us going down the road and then we can make adjustments to it as need because we won't find those things out until actually do it. We don't know what we don't know yet and we won't know until we figure something out.

FOX: My concern is that a zoning change feels really permanent to the location, and then if the operator changes at that location, then there's no opportunity to police that particular operator, so to me licensure makes the most sense before a zoning change. The Nuisance House Act, which actually governs residences too where this kind of thing can happen, to me makes a lot of sense, but we don't have jurisdiction over those two rules.

DOOL: To move this forward, I would like to second Commissioner Foster's motion, and if somebody wants to call the question.

FOSTER: To clarify who seconded, was it Chuck, did you do it?

FOX: Commissioner Foster made the motion to approve the recommendations for zoning and MAPC policy change on notification and we have a second from Commissioner Warren and a double second from Mr. Dool.

J. JOHNSON: I'd like to make a substitute motion to defer this for some period of time that's reasonable to come up with the answers from the questions that were raised today.

WARREN: Which questions do you want answered Joe? We can do this all year long.

J. JOHNSON: I think staff has them written down.

ALDRICH: I just don't think we need to be passing something that we don't fully understand, so I'm going to second that motion.

FOX: Okay, we have a motion from Commissioner Johnson to defer a decision, we don't have a specified date for the deferral, or any actions to be taken between now and the deferral, could we...

ALDRICH: Let me back up a little bit, following up on Commissioner McKay's statement about maybe a possible board or commission from this group of maybe four individuals or so, would that be something that this board would consider before making this final vote and moving it forward?

J. JOHNSON: I think that's what Advanced Plans is for.

FOX: The Advanced Plans would then be the body to do further study with staff until a strong recommendation for approval could be brought to the full commission.

J. JOHNSON: That would be my motion.

WADLE: And just a quick staff clarification – I appreciate the dialogue – I appreciate that the challenge of deliberating this. The one thing on this motion is, I'm just curious, what additional information or what specifics can staff do, and I'd like to kind of know that answer because if I get the question about, well, what happened to MAPC, I'd like to be able to say what specifically staff can do to help move the discussion forward to a solution, whatever solution is preferred.

ALDRICH: One of the questions that was brought up was a notification area. The other question that was brought up was a protest percentage, whether it could for from 50% to 40% to 30%, and then comments were made and then it's just dropped. So, again, those are just some of the questions that I want answered. Does it make sense to lower the – again, since we're so tight on the notification area – that percentage of notification down from 50% to 30%, for example.

J. JOHNSON: We also need to notify the occupant as well as the owner.

HARTMAN: We don't for zoning cases.

WARREN: We've had those questions and we've answered them.

ALDRICH: What's the percentage then?

NICKS: I haven't had a chance to talk yet. We've been going around and around on this topic since 10:00 this morning. I'm frankly worn out. Staff has made a proposal. We got to establish a baseline at some point in time. We can study the thing to death, but at that point in time whether it's 50%, 30%, whatever it is, we're going to establish a baseline and we're going to react to that. Who says we can't change it after that?

I live in a neighborhood that's 50 years old and we've lived there since we built the house. We don't have an HOA, we don't have a neighborhood association – I can tell you this – I'd rather have an Airbnb as neighbors to the north or south of me, either one of them, I'd take them today and we can move the people that own the houses but nonetheless they'd be better occupants in my view than what I have right now. I think we ought to move forward, establish a baseline. Surely, we can change the rules, regulations or whatever we establish today later on if we need to but we have to start somewhere.

FOX: I'll take one more comment and then I want to call the question on the substitute motion.

WARREN: I call the question on the substitute motion.

FOX: We are calling the question on the substitute motion, which is to defer to a future date with a sub study group, which would be Advanced Plans.

SUBSTITUTE MOTION: To defer to a future date with a sub study group, which would be Advanced Plans.

J. JOHNSON moved, **ALDRICH** seconded the motion, and it failed (4-8), **FOX, DOOL, GREENE, NICKS, FOSTER, WARREN, MILES and HARTMAN** opposed.

MOTION: To approve subject to staff recommendation.

FOSTER moved, **WARREN** seconded the motion, and it carried (7-5), **FOX, MCKAY, BLICK, J. JOHNSON and ALDRICH** opposed.

4.9 DER2023-00006: Changes to the Wichita Municipal Code Regarding Short Term Rentals

PROPOSED CHANGES: Creation of short term rental licensing and nuisance party house sections

Recommended Action: It is recommended that the MAPC recommend that the City Council approve the proposed Municipal Code changes.

Background:

A more expansive timeline of events is included as an attachment to this report. Below is an overview of recent events related to this time.

On March 9, 2023, the MAPC Advance Plans Committee received a presentation on the proposed short term rental regulation changes and approved a motion to recommend moving it on to the full MAPC and initiating the staff recommended actions to recommend that the full MAPC:

1. initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.
2. approve the proposed Unified Zoning Code amendments;
3. endorse the Wichita Municipal Code changes; and
4. amend the MAPC Policy 20.

On March 23, 2023, the MAPC approved setting the hearing date for April 13, 2023 to consider the proposed amendments to the Unified Zoning Code.

On April 13, 2023, the Wichita-Sedgwick County Metropolitan Planning Commission received a presentation on proposed regulation changes related to short term rentals in Wichita and held a

public hearing. Multiple members of the public provided comments. The Planning Commission voted to defer the item so that the MAPC Advance Plans Committee can consider the proposed regulation changes at their May 11, 2023 meeting.

Analysis:

Community Mission

The City of Wichita Mission Statement is to be an exceptionally well-run City that:

- keeps residents safe;
- grows the economy;
- builds dependable infrastructure; and
- provides conditions for living well.

Short-term rentals can touch on all four of these mission/goals. The question for Wichita is if short-term rentals are a good fit for our community. If yes, then what is the best/preferred way for them to operate in Wichita? City of Wichita staff have worked since 2021 with approximately 16 events and opportunities for public input. The public input collected has been used to develop and refine the recommended changes to Wichita Municipal Code.

Proposed Changes

Licensing

Below are highlights of the proposed licensing program, which would be established by ordinance and part of the City's Municipal Code.

- All short-term rental locations would need to be licensed through the City.
- The licenses would require insurance (which could be obtained from a 3rd party or booking platform), posting of a good neighbor policy, specify the maximum occupancy, and require contact information for 24/7 reporting of issues.
- The licensing would also require compliance with codes and inspections based on complaints.
- It would establish fines and other enforcement actions for non-compliance.
- The annual fee for a short-term rental license would be \$225 per short term rental.
- Existing short term rental owners/operators would have 12 months to come into compliance with licensing requirements (including but not limited to Unified Zoning Code requirements).
- Inspections would be on a complaint basis.
- The maximum overnight occupancy is limited to 2 adults per bedroom plus an additional 2 adults. The occupancy is based on adults (over 12 years old) and there is no occupancy limit for children.
- Gatherings are limited to two times the maximum overnight occupancy or 20 persons, whichever is less. Gatherings must disburse by 10 pm.
- Short term rentals can only be advertised for use if they are properly licensed and must include the license number.

Municipal Code Party Houses

This proposed change would create a new section of the City of Wichita Municipal Code to address party houses. The ordinance would define what the nuisance activities are, enforcement actions, and penalties.

PROPOSED CHANGES: The proposed amendments to the Unified Zoning Code are detailed below.

Recommended Action: It is recommended that the MAPC:

1. initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.;
2. approve the proposed Unified Zoning Code amendments;
3. recommend that the governing bodies adopt the proposed Unified Zoning Code amendments; and
4. amend MAPC Policy 20.

Background:

A more expansive timeline of events is included as an attachment to this report. Below is an overview of recent events related to this time.

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5. initiate an amendment to the Unified Zoning Code per Unified Zoning Code Article V.C.2.
6. approve the proposed Unified Zoning Code amendments;
7. endorse the Wichita Municipal Code changes; and
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rentals are a good fit for our community. If yes, then what is the best/preferred way for them to operate in Wichita? City of Wichita staff have worked since 2021 with approximately 16 events and opportunities for public input. The public input collected has been used to develop and refine the recommended changes to the Unified Zoning Code and MAPC Policy 20.

Proposed Changes

Wichita-Sedgwick County Unified Zoning Code

Below are highlights of the proposed changes to the Unified Zoning Code (the full text of proposed changes is attached). For ease of reading, the proposed changes are listed by Unified Zoning Code Article.

Article II - Rules of Construction and Definitions

- These changes would make short-term rental a defined term and clarify the relationship with other defined terms.

Article III –Use Regulations

- These changes would establish the where short-term rentals are allowed by right and where they require a zoning action (Conditional Use or Administrative Permit). In general, it would make STRs allowed by right - except if they are not owner occupied and located in SF-10, SF-5, TF-3, MF-18, or MF-29 districts. In those instances, a zoning action (Administrative Permit or Conditional Use) would be necessary.
- It would also prohibit the use of a Recreational Vehicle for a short-term rental.

Article V – Development Review Procedures

- A new section L would be created.
- It would be used to consolidate Administrative Permits into this area of the code. Currently, the Unified Zoning Code allows Administrative Permits for Wireless Communication Facility. However, it is located in a different section of the code. This change would streamline the Unified Zoning Code and make it easier to use/navigate.
- It would be expanded to a short-term rental Administrative Permit, which would allow property owners to apply for and the Planning Director to approve applications for short term rental uses that are not owner occupied.
- Article V.L.5, would specify that written notice must be mailed to the owners of all properties which Abut and are Contiguous to the application area.
- Article V.L.7, would prohibit the Planning Director from approving Administrative Permits for short term rentals if the Director finds that the proposed development would have adverse impacts or are protested by more than 50% of the owners of land which Abut and are Contiguous to the application area.
- Article V.L.8, would specify the timing of the Administrative Permit review process.
- Article V.L.9. would establish an Administrative Permit appeal process. This would include a process for the applicants to appeal and also for owners of land Abutting and Contiguous to the application site to protest. If a valid appeal or protest petitions representing more than 50% of the

owners of land Abutting and Contiguous to the application site is submitted, then the application is forwarded as a Conditional Use to the Planning Commission.

MAPC Policy Statement Number 20

This proposed change would this policy to clarify that development application public notice signs are required for Administrative Permits wireless communications facilities and not for Administrative Permits for short term rentals.

SCOTT WADLE, PLANNING DIRECTOR: Presented the staff reports.

MCKAY: Is that complaints?

WADLE: No, that would be violations.

DOOL: What is the fine? Is the fine going to be \$500 for people that you find out are operating without a license?

JR COX, ZONING ADMINISTRATOR: I believe the answer's yes, it would be a misdemeanor, so should be \$500 and/or six months in jail. I'll verify that, but I believe that would be correct.

WARREN: Notification 24/7 and then showing up within 30 minutes. Where did that 30 minutes come from? I'm thinking if I owned one of these and I got a call at 3:00 in the morning, I'm not sure I could get my pants on in 30 minutes. Would an hour be...?

WADLE: We can certainly change that to be an hour. It was in response to some of the comments that we heard from the prior version at the MAPC a couple of weeks ago that the issue was that okay it's great that you have a registered contact for these but what are the expectations of what they're going to do to address the situation and so making it a clear expectation that they should appear at the property is how we attempted to address that. The 30 minutes I believe was included because it was felt that if there's a situation or an incident that's taking place maybe there's loud music or people throwing trash or something it was an attempt to get them there in a timely fashion to be able to address those situations.

GREENE: What's the penalty if they're not there within 30 minutes?

SHARON DICKGRAFE, CHIEF DEPUTY CITY ATTORNEY: The penalty for any violation whether it's the 30 minutes or whether it's having too many people, it is a misdemeanor and it is a fine up to \$500, and arguably jail time up to six months – those are offenses that would go through municipal court, so it's not a civil penalty that Scott would just be rendering, it would have to go through court.

FOX: The platforms that govern Airbnb's, VRBOs, etc. – could they be the one requesting an inspection or would it have to be a local citizen?

WADLE: It's just based on a complaint, so somehow it would have to be communicated to the city so that staff would process that.

COX: And if I may, I point out in addition to what Sharon said, every day the violation exists is a separate offense, assuming they're found guilty, it would be accumulative.

WADLE: And I would point you to page 22 in the packet for where that is – it's in item F.

ALDRICH: I just want to revert back a little bit to the license fees and also the insurance. Where'd you come up with those figures? They seem a little light to me.

WADLE: We were charged with coming up with a fee that allowed for the short-term rental program to fund itself, likewise; we were also charged with not creating something that generated more fees than were necessary, and so that how we have arrived at the \$225 is based on an estimate for how much it would cost to hire a part-time person to process the applications and do the enforcement as well as what it would cost for the equipment for them to do that job. Also, what it would cost to do to hire or to contact with an organization to monitor and report violations to us of short-term rentals.

ALDRICH: And the insurance, I just think \$250,000 is extremely light. I've had people that want to rent part of my lot for fireworks and that's a million dollar policy for three weeks.

WADLE: I believe that amount is based on requirements that the city has for other programs, but I'll defer to Sharon on that one.

DICKGRAFE: It came from a number of other ordinances in other cities and that can be whatever amount staff determines it is. I would agree a million dollars would be appropriate for a fireworks stand. The city's for contract requirements is \$500,000, and I think this was kind of a medium amount that staff thought was appropriate.

WADLE: And that amount is listed on page 12 of the packet.

FOSTER: Is noise one of those nuisances or is that under a separate noise ordinance?

DICKGRAFE: Yes, noise is one of the nuisances.

WADLE: And that is on page 29 and 30 of the packet – noise is #2 – it's a violation of a relevant chapter of the city code.

MOTION: To approve recommendation to Wichita City Council.

MCKAY moved, **DOOL** seconded the motion, and it carried (12-0).

5. **NON-PUBLIC HEARING ITEMS**
NONE

6. **OTHER MATTERS/ ADJOURNMENT**

Planning Commission adjourned.

State of Kansas)

Sedgwick County)^{SS}

I, Scott Wadle, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

ORDINANCE NO. 52-266

AN ORDINANCE AMENDING ARTICLE II, SECTION B, ARTICLE III, SECTIONS B AND D, ARTICLE V, SECTION A AND ARTICLE VI, SECTIONS G AND H OF THE UNIFIED ZONING CODE AND REPEALING THE ORIGINAL SECTIONS THEREOF AND CREATING ARTICLE II, SECTION B, ITEM 12.q, ARTICLE III, SECTION D, ITEM 6.qq AND ARTICLE V, SECTION L, OF THE UNIFIED ZONING CODE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Article II, Section B, Items 2.e., 5.i., 6.g. and 13.f. of the Unified Zoning Code (the “UZC”), are hereby amended to read as follows:

2.e. **Bed and Breakfast Inn** means the use of an owner-occupied or manager occupied residential Structure to provide rooms for temporary lodging or lodging and meals for not more than 15 Transient Guests on a paying basis. See Transient Guest in 13.f. herein. In the City of Wichita only, a Bed and Breakfast Inn shall be considered a Short Term Rental in the City.

5.i. **Group Residence** means a residential facility providing cooking, sleeping and sanitary accommodations for a group of people, not defined as a Family, ~~on a weekly or longer basis or~~ Transient Guests. Typical uses include fraternity or sorority houses, dormitories, residence halls, boarding or lodging houses, children's homes, and emergency shelters for the homeless and for victims of crime, abuse or neglect. The term Group Residence does not include Group Homes, ~~or~~ Correctional Placement Residences, or Short Term Rental in the City.

6.g. **Hotel or Motel** means an establishment used, maintained or advertised as a place where sleeping accommodations are supplied for short term use by Transient Guests, ~~usually for less than a week~~, in which rooms are furnished for the accommodation of such Transient Guests, which may have as an Accessory Use one or more dining rooms, and may include individual kitchen facilities. Typical uses include Hotels, Motels, tourist courts and emergency shelters for the homeless and for victims of crime, abuse or neglect. The term Hotel or Motel does not include Short Term Rental in the City

13.f. **Transient Guest** means in the City, a person who occupies a room(s) for a period of not more than 28 days at a time (consecutive days). In the County, it means a person who occupies a room(s) for a period of less than one week at a time.

Section 2. Article III, Sections B, Items 4.b.(1), 5.b.(1), 6.b.(1), 7.b.(1), 8.b.(1), 9.b.(1), 10.b.(1), 11.b.(1), 12.b.(1), 13.b.(1), 14.b.(1), 16.b.(1) and 19.b.(1), and D, Item 6.g.(3) of the UZC, are hereby amended to read as follows:

III-B.4.b.(1)

Permitted Uses. The following Uses shall be permitted by-right in the SF-10 District.

Residential Uses

Single-Family

Manufactured Home (only in the County and subject to Sec. III-D.6.1)

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.5.b.(1)

Permitted Uses. The following Uses shall be permitted by-right in the SF-5 District.

Residential Uses

Single-Family

Manufactured Home (only in the County and subject to Sec. III-D.6.1)

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.6.b.(1)

Permitted Uses. The following Uses shall be permitted by-right in the TF-3 District.

Residential Uses

Single-Family

Duplex

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.7.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.8.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.9.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Group Residence, Limited

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.10.b.(1)

Residential Uses

Single-Family

Manufactured Home

Manufactured Home Park

Manufactured Home Subdivision

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.11.b.(1)

Residential Uses

Single-Family

Duplex

Group Home

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.12.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Manufactured Home (only in the County and subject to Sec. III-D.6.1)

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Group Residence, Limited and General

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.13.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Group Residence, Limited

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.14.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Manufactured Home (only in the County and subject to Sec. III-D.6.1)

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Group Residence, Limited and General

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.16.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Manufactured Home (only in the County and subject to Sec. III-D.6.l)

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Group Residence, Limited and General

Short Term Rental in the City, subject to Sec. III-D.6.qq

III-B.19.b.(1)

Residential Uses

Single-Family

Duplex

Multi-Family

Accessory Apartment, subject to Sec. III-D.6.a

Assisted Living

Group Home

Group Residence, Limited and General

Short Term Rental in the City, subject to Sec. III-D.6.gg

III-D. - Use Regulations Schedule

USE TYPE	R R	S F 2 0	S F 1 0	S F 5	T F 3	M F 1 8	M F 2 9	B	M H	N O
RESIDENTIAL										
Single-Family	P	P	P	P	P	P	P	P	P	P
Duplex					P	P	P	P		P
Multi-Family					C	P	P	P		C
Manufactured Home	P	P	P						P	
Manufactured Home Subdivision									P	
Manufactured Home Park									P	
Accessory Apartment	C	C	C	C	C	P	P	P	C	C
Assisted Living					C	P	P	P	C	C
Group Home	P	P	P	P	P	P	P	P	P	P
Group Residence, Limited	C	C	C	C	C	C	C	P		C
Group Residence, General	C	C						C		
Short Term Rental in the City			C/P	C/P	C/P	C/P	C/P	C/P	C/P	C/P

III-D.6.g.(3) A Wireless Communication Facility shall be approved by Administrative Permit in any zoning District, under the procedures in Sec. V-L ~~VI-G.9~~ and ~~Sec. VI-H.5~~, if it conforms to the Location/Design Guidelines in the "Wireless Communication Master Plan" and, for zoning Lots located within the City, is designated on the "Properties Eligible for an Administrative Permit for a Wireless Communication Facility Map" ~~of Sec. I-L~~ as shown in the APPENDICES AND SUPPLEMENTS of this Code:

(a) New disguised ground-mounted facilities up to 85 feet in height;

(b) New undisguised ground-mounted facilities up to 65 feet in the SF-10, SF-5, TF-3, MF-18, MF-29, B and MH zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;

(c) New undisguised ground-mounted facilities up to 85 feet in the NO, GO and NR zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.;

(d) New ground-mounted facilities up to 120 feet in height in the RR, SF-20, U, LC, OW, and GC zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.; or

(e) New ground-mounted facilities up to 150 feet in height in the IP, CBD, LI and GI zoning Districts that comply with the compatibility height standards as outlined in Sec. IV-C.5, which shall not be reduced or waived through the provisions of Sec. V-I.2.e.

If the property on which the facility is located is within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a, or Sec. V-C.14, excluding the requirement of V-C.14.a., as applicable.

Section 3. Article V, Section A, Item 5 of the UZC, is hereby amended to read as follows:

5. **Standing to appeal.** The following persons shall have the standing to appeal a matter under this Code, except for a matter involving a Short Term Rental in the City, as shown below: the applicant; the Planning Director; the Zoning Administrator; the Planning

Commission; the Governing Body; any owner of land directly affected by the action or proposed action; any owner of land within 200 feet of the property in question in the City and within 1,000 feet of the property in question in the County; if the matter is partly or wholly within the Urban Area of Influence of a second or third class city in the County, by the Planning Commission or municipal government of that city; or by any other person determined by either the body taking the final, non-appellate, action or by the appellate body to be actually or potentially aggrieved by the action or proposed action. For a matter involving a Short Term Rental in the City, the following persons shall have the standing to appeal the action of the Planning Director: the applicant, the Zoning Administrator, the Planning Commission, the Governing Body, and all owners of record of land directly affected by the action and which Abut and are Contiguous to the application area, irrespective of streets or alleys.

Section 4. Article VI, Section G, Item 9 and Section H, Item 5 of the UZC, are hereby amended to read as follows:

VI-G. Planning Director

9. Administrative Permits. The Planning Director, with the concurrence of the Zoning Administrator, shall have the authority to approve, approve with conditions or modifications, or deny applications for ~~Wireless Communication Facilities~~ Administrative Permits pursuant to Sec. ~~III-D.6.g~~ V-L. The Planning Director's decision on such an application may be appealed by filing an application for a Conditional Use pursuant to Sec. V-D. If the application area is located within a CUP or P-O, the application for Conditional Use approval shall also be considered as an application for an amendment to the CUP or P-O as outlined in Sec. V-E.13, or Sec. V-C.13, as applicable.

VI-H. Zoning Administrator

5. **Administrative Permits.** The Zoning Administrator shall have the authority to review and recommend to the Planning Director approval, approval with conditions or modifications, or denial of applications for ~~wireless communication facilities~~ Administrative Permits pursuant to Sec. ~~III-D-6-g~~ V-L. Administrative Permits ~~for Wireless Communication Facilities~~ may be granted by the Planning Director only with the concurrence of the Zoning Administrator.

Section 5. Article II, Section B, Item 12.q. of the UZC, is hereby created to read as follows:

12.q. **Short Term Rental in the City** means the use of a residential Dwelling Unit or Structure to provide room(s) for temporary lodging or lodging and meals for Transient Guests on a paying basis. The residential Dwelling Unit or Structure may be owner or manager occupied. The term Short Term Rental in the City also includes Bed and Breakfast Inn.

Section 6. Article III, Section D, Item 6.qq of the UZC, is hereby created to read as follows:

6.qq. **Short Term Rental in the City.** Although listed as permitted Uses in some Districts, Short Term Rental in the City shall always require an Administrative Permit and be subject to Sec. V-L (Administrative Permit review procedures) or a Conditional Use and be subject to Sec. V-D (Conditional Use review procedures) when non-owner occupied and located in the SF-10, SF-5, TF-3, MF-18 and MF-29 Districts. A non-owner occupied Short Term Rental in the City shall be permitted in all other Districts where listed as a permitted Use. An owner occupied

Short Term Rental in the City shall be a permitted where listed as a permitted Use. Whether allowed by-right, by Administrative Permit approval, or by Conditional Use approval, a Short Term Rental in the City shall be subject to the following standards:

- (1) Permitted only in residential Dwelling Units and permitted Accessory Apartments.
- (2) May be permitted as either a Primary Use or an Accessory Use.
- (3) Not permitted to be in any Recreational Vehicle.
- (4) Must be licensed and operated in accordance with the requirements of Chapter 3.40 of the Code of the City of Wichita.
- (5) Must be in compliance at all times with all applicable zoning, building, fire and life-safety, housing and health codes.
- (6) Must not exceed the posted capacity permitted in accordance with Chapter 3.40 of the Code of the City of Wichita.

For the purposes of this Section, owner occupied shall mean any Dwelling Unit in which the owner resides and which is the owner's primary place of residence. In order to be considered to be owner-occupied, the owner must be onsite during the period of time the unit(s) is rented as a Short Term Rental.

Section 7. Article V, Section L of the UZC, is hereby created to read as follows:

L. ADMINISTRATIVE PERMITS

The intent and purpose of this section is to allow for administrative action, and set out the required review procedures for Administrative Permits.

1. **Authority.** The Planning Director, with the concurrence of the Zoning Administrator shall have the authority to approve applications for Administrative Permits.
2. **Types of Administrative Permits Allowed.** The following Administrative Permits are allowed, when required by this Code.
 - a. Wireless Communication Facility, subject to Sec. III-D.6.g.
 - b. Short Term Rental in the City, subject to Sec. III-D.6.qq.
3. **Initiation.** An application for an Administrative Permit may be proposed by the owner(s) or the authorized representative of the owner(s) of the subject property. If the property is located within a CUP or P-O, the Administrative Permit shall also be considered as an application for an adjustment of the CUP or P-O as outlined in Sec. V-E.14, excluding the requirement of V-E.14.a. for a Wireless Communication Facility, or Sec. V-C.14, excluding the requirement of V-C.14.a. for a Wireless Communication Facility, as applicable.
4. **Application.** A complete application for an Administrative Permit shall be submitted to the Planning Department in a form established by the Planning Department along with a nonrefundable fee that has been established by the Governing Body to defray the cost of processing the application. No application shall be processed until the application is complete and the required fee has been paid. Applications shall include a site plan that clearly delineates the location and characteristics of the proposed use.

5. **Notices.** The provisions of this Section describe the various types of notices that may be required. The actual type of notice required for a given application is specified below.
 - a. Written notice.
 1. For a Wireless Communication Facility application, a sign shall be posted on the property for the specified time as required by Planning Commission policy.
 2. For a Short Term Rental in the City, written notification stating the nature of the proposed use shall be mailed to all owners of record of land which Abut and are Contiguous to the application area.
6. **Action by the Planning Director.** The Planning Director shall approve the application for an Administrative Permit unless the request would violate the provisions of Sec. V-L.7. The Planning Director may impose special conditions of approval on the Administrative Permit, including but not limited to time limitations, access limitations, design or architectural modifications, Screening, Landscaping, Parking, and other controls to prevent damage or mitigate adverse impacts to adjacent properties or safeguard public interests.
7. **Administrative Permit Criteria.** The Planning Director shall not approve an Administrative Permit if the Planning Director finds that the proposed development:
 - a. is a Wireless Communication Facility that does not conform to the Location/Design Guidelines in the "Wireless Communication Master Plan"

and, for zoning Lots located within the City, is not designated on the
“Properties Eligible for an Administrative Permit for a Wireless
Communication Facility Map” of the APPENDICES AND SUPPLEMENTS
of this Code, and that does not meet the requirements of Sec. III-D.6.g.;

- b. is a Short Term Rental in the City that does not meet the requirements of Sec.
III-D.6.qq.;
- c. is a Short Term Rental in the City and more than 50% of all owners of record
of land which Abut and are Contiguous to the application area, as specified
above, file a written protest petition;
- d. would adversely affect the safety and convenience of vehicular and pedestrian
circulation in the vicinity of the subject tract, including traffic reasonably
expected to be generated by the proposed Use and other Uses in the area given
the existing zoning, existing land Uses, and proposed land Uses in the area;
- e. creates more adverse impacts on existing Uses in surrounding areas than
might reasonably result from Development of the Site in strict compliance
with applicable standards;
- f. would not be compatible with existing or permitted Uses on Abutting Sites, in
terms of Building Height, Setbacks and Open Spaces, bulk and scale,
Landscaping, Parking or circulation features; or
- g. will be detrimental to the public health, safety or welfare or materially
injurious to properties or improvements in the vicinity for reasons specifically
articulated by the Planning Director.

The applicant shall have the burden of demonstrating that the proposal meets the applicable review criteria.

8. **Notice of decision.** The Planning Director shall, within ~~two~~ three business days of making a decision, give notice of such decision to the applicant, to the Zoning Administrator, and to any other person reasonably requesting such notice. The Planning Director's decision shall be considered confirmed as submitted if the Zoning Administrator has not responded within ten days of the date of transmission, unless the review period is extended by action of the applicant.

9. **Appeal of the Planning Director's decision.** For the purposes of this Section, any person shall have the standing to appeal the action of the Planning Director, as specified in Sec. V-A.5. When an application for an Administrative Permit has been denied, or when such application has been approved with conditions or modifications that are unacceptable to the applicant, the applicant may file an application for Conditional Use approval with the Planning Commission pursuant to Sec. V-D and the filing fee for the Administrative Permit shall be applied toward the filing fee for the Conditional Use approval. When an application for an Administrative Permit, except for a Short Term Rental in the City, has been approved, with or without conditions, and a person with standing to appeal as specified in Sec V-A.5 has filed a written protest petition, the application shall be forwarded to the Planning Commission for Conditional Use approval pursuant to Sec. V-D. When an application for a Short Term Rental in the City has been approved, with or without

conditions, and a person with standing to appeal as specified in Sec V-A.5, except for all owners of record of land which Abut and are Contiguous to the application area, file a written protest petition, the application shall be forwarded to the Planning Commission for Conditional Use approval pursuant to Sec. V-D. If more than 50% of all owners of record of land which Abut and are Contiguous to the application area, as specified above, file a written protest petition, the application shall be forwarded to the Planning Commission for Conditional Use approval pursuant to Sec. V-D. Any appeal provided for in this Section must be filed within 14 days of the date of the decision.

If the application area is located within a CUP or P-O, the application for Conditional Use approval shall also be considered as an application for an amendment to the CUP or P-O as outlined in Sec. V-E.13, or Sec. V-C.13, as applicable.

10. **Appeal of the Planning Commission's decision.** Any person as specified in Sec. V.L.9 dissatisfied with the decision of the Planning Commission may appeal to the Governing Body. Any such appeal must be filed within 14 days of the date of the final decision.

11. **Appeals of final action.** The Governing Body's decision on an application for Conditional Use, CUP or P-O approval, as applicable, shall be the final local action. Appeals of such final local action shall be taken to the district court in and for the Eighteenth Judicial District of the State of Kansas. Any such appeal must be filed within 30 days of the date of the final decision.

Section 8. The originals of Article II, Section B, Items 2.e., 5.i., 6.g. and 13.f., Article III, Section B, Items 4.b.(1), 5.b.(1), 6.b.(1), 7.b.(1), 8.b.(1), 9.b.(1), 10.b.(1), 11.b.(1), 12.b.(1), 13.b.(1), 14.b.(1), 16.b.(1) and 19.b.(1), and Section D, Item 6.g.(3), Article V, Section A, Item 5 and Article VI, Section G, Item 9 and Section H, Item 5 of the Unified Zoning Code are hereby repealed.

Section 9. This ordinance shall be included in the Unified Zoning Code and shall be published once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 19th day of September 2023.

Brandon Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

Approved as to form:

Jennifer Magaña,
City Attorney and Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: PUD2023-00007 – Zone Change Request in the City from SF-5 Single-Family Residential District to PUD Planned Unit Development to Permit Development of Athletic Fields Associated with the Northwest YMCA; Generally Located on the South Side of West 21st Street North, Within One-Half Mile West of North 135th Street West. (District V)

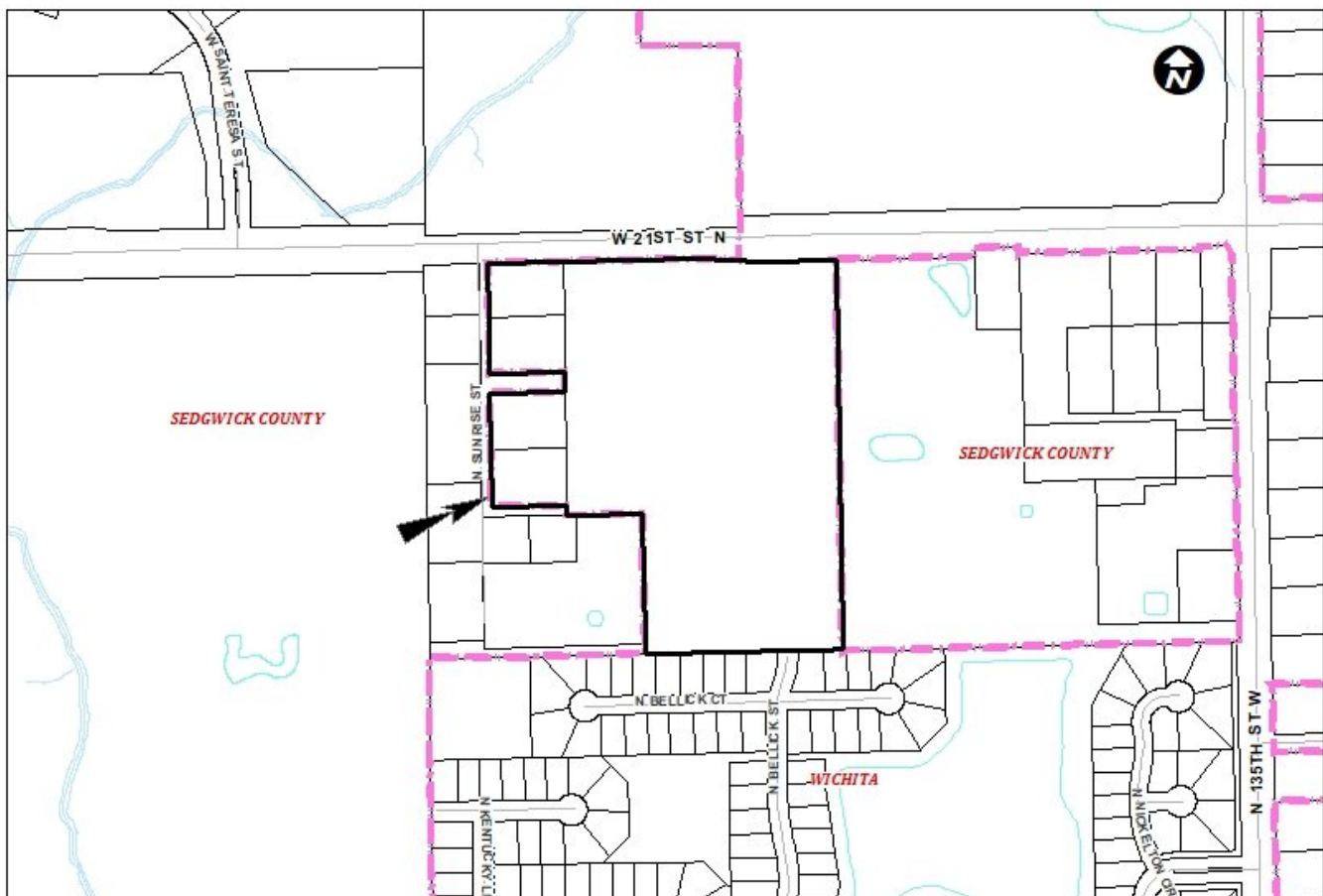
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve with changes to PUD General Provisions (9-1-1).

MAPD Staff Recommendations: Approve.

DAB V Recommendations: Approve with alternate changes to PUD General Provisions (8-1).



Background: The applicant is requesting a zone change from SF-5 Single-Family Residential District to PUD Planned Unit Development to create the YMCA Athletics Planned Unit Development (PUD #115). The site is approximately 26 acres in size and is generally located on the south side of West 21st Street North and within one-half mile west of North 135th Street West. The site is made up of five parcels in the city of Wichita and is currently used as an agricultural field. The proposed PUD would permit the development of multiple athletic fields associated with the Northwest YMCA, which is located adjacent to this site on the north side of West 21st Street.

Land Uses

The primary function of the site is proposed to be multiple athletic fields to accommodate various recreation programs provided by the YMCA. This primary function is defined by the Unified Zoning Code (UZYC) as Recreation and Entertainment Indoor and Outdoor. These use categories are generally defined as privately-owned establishments offering recreation, entertainment, or games of skill to the general public. It is important to note that the term “entertainment” in the use category definitions does not permit live music, DJs, karaoke, or other forms of entertainment as defined in Chapter 3 of the Wichita Municipal Code. Additional zoning action would be required to provide these forms of entertainment either indoors or outdoors on the subject site. The use of “Parks and Recreation” does not apply to the proposed use as “Parks and Recreation” is under the ownership or control of a public agency or homeowner’s association per the definition in the UZYC. The existing YMCA facility adjacent to the north is a relatable example of both indoor and outdoor Recreation and Entertainment. This application is a proposed expansion of its campus.

The PUD proposes hours of operation for any outdoor Recreation and Entertainment uses and any uses accessory to outdoor Recreation and Entertainment. The PUD proposed these hours to be as follows:

- 6:00 a.m. to 11:00 p.m. Sunday through Thursday; and
- 6:00 a.m. to 12:00 a.m. (midnight) Friday and Saturday.

Noise compatibility standards shall be per Section IV-C.6 of the UZYC, which states: “*No sound amplification system for projecting music or human voices shall be permitted on any property zoned NO or more intensive if the music and/or voices can be heard within any residential zoning District that is located within a 500-foot radius of the subject site.*”. The PUD proposed that outdoor sports/recreation be exempt from this standard, provided that any amplified music will still be subject to it. In essence, the noise compatibility standard for outdoor sports and recreation would not apply to an amplified voice but does apply to any amplified music.

In addition to the primary use of the site, the PUD text proposes the following uses. Many of these are included to provide opportunity for appropriate redevelopment of the site if at any point in the future the athletic fields are no longer in use.

- Church or Place of Worship;
- Community Assembly;
- Day Care, General;
- Library;
- Parks and Recreation;
- Schools and/or University/College; and
- Agriculture.

The PUD also permits the following uses with customized standards:

- Farmer’s Market in the City as an accessory use to a principal land use and subject to Supplementary Use Regulations found in Section III-D.6.jj, except for item #5;
 - o The full text of the Supplementary Use Regulations are attached; and
 - o Item #5 states the following: The YMCA is requesting a waiver of these restrictions in order to operate on weekends.

Section III-D.6.jj.5: Farmer's Markets are temporary in nature and may operate no more than five calendar days per month only Monday through Friday during the months of April through October and only between the hours of 6 a.m. and 9 p.m., with the exception of Farmer's Markets operated on City-owned property.

- Mobile Food Unit in the City (Food Trucks) are permitted as accessory uses; and
- Office, General; Retail, General; Automated Teller Machine; Event Center in the City, Personal Care Services; Personal Improvement Services; and Teen Club in the City are permitted only within the north 750 feet of the site, which is approximately the north half to two-thirds of the site.
 - o From 21st Street, the western portion of the site, the property is approximately 800 feet deep. On the eastern portion of the site, the property is approximately 1,230 feet deep.

Setbacks and Building Height

The proposed building setbacks are as follows:

- 25 feet along the north property line;
 - o This is a standard front setback for residential zoning districts but generally more restrictive than most commercial zoning districts.
- 20 feet along the east property line; and
 - o As an interior side setback, this is more restrictive than standard zoning setbacks in all zoning districts. Standard compatibility setbacks for commercial buildings next to residential zoning districts is between 15 and 25 feet.
- 60 feet along the west and south property lines.
 - o As a rear and interior side setback, this is more restrictive than standard zoning setbacks in all districts. Standard compatibility setbacks for commercial buildings next to residential zoning districts is between 15 and 25 feet.

The PUD permits building height to be 80 feet (per LC Limited Commercial District standards) provided that the height compatibility standards of Section IV-C.5 of the UZC apply. Those standards state that a structure is limited to 35 feet in height when within 50 feet of a lot line of property zoned TF-3 Two-Family Residential District or more restrictive. This standard would apply to property lines on the east, south and west. Structures may achieve one-foot greater in height for every three feet beyond 50 they are from said property lines.

Lighting

The proposed lighting standards are less restrictive than the standard set forth in Section IV-B.4 of the UZC. The PUD permits the height of light poles to 15 feet within 200 feet of residential zoning districts, except for areas near the north and east property lines. Properties to the north and east have light poles that already exceed 15 feet in height. The standard in the UZC restricts the height of light poles to 15 feet when within 200 feet of residential zoning districts. The PUD requires all lights to be shielded to direct light disbursement in a downward direction to prevent light trespass onto adjacent properties. This is a standard provision per the UZC. In addition, the PUD requires a Lighting Study Plan to be reviewed and approved by Zoning Administrator and the Director of Planning for all lights that exceed 15 feet in height within 200 feet of the property line. The Lighting Study Plan will ensure that there is no light trespass over to surrounding, residentially zoned, properties. For light poles located farther than 200 feet from the property lines, Section IV-B.4 of the UZC permits lights poles to not exceed a height that is equal to one-half the distance to the property line.

Parking and Sidewalks

Off-street parking requirements will be based on a parking study that will be submitted for review and approval by the Zoning Administrator prior to development. The PUD requires a pedestrian walk plan which will identify the pedestrian walking paths within the PUD and their connection to any future sidewalks along West 21st Street North.

Signage

Signs are permitted as per the Wichita Sign Code for the LC Limited Commercial District. However, no building signage shall be visible from ground view from residential land uses to the south or west. The Wichita Sign Code permits LC-zoned properties to have the following regarding signage:

- Illuminated on-site ground or pole signs up to 25 feet in height provided the sign height may increase by five feet for every permitted sign not utilized. Maximum height is limited at 35 feet;
- Up to eight on-site ground or pole signs along West 21st Street;

- A total of 880 square feet of signage along West 21st Street with the maximum area of a single sign being limited to 300 square feet; and
- Building signs cannot be illuminated when within 150 feet of adjacent, residentially zoned lots.

It is staff's opinion that permitted signs per the LC Limited Commercial District are appropriate considering that West 21st Street is an arterial street, along which higher intensity uses are likely to occur in the future as development along the corridor continues.

Screening and Landscaping

The PUD proposes no solid screening fences along the perimeter of the site. However, trash receptacles shall be appropriately screened from ground level view with fencing and/or landscaping. In place of solid screening along the perimeter of the property, the PUD proposes landscaping with the following provisions:

- Landscaping shall be in accordance with the Wichita Landscape Ordinance; and
 - o This requires a landscaped street yard, parking lot screening, and parking lot trees along West 21st Street North.
- The PUD proposes to use 15-foot-deep landscape buffers with a required number of trees per 30 linear feet where 30 percent of the trees must be evergreen. Exceptions to the buffer include:
 - o Along the east property line due to the non-residential use to the east (church); and
 - o If a drainage detention facility along the property line creates a 100-foot buffer between residential land uses and the uses permitted by the PUD.

The proposed provisions for a landscape buffer in lieu of solid screening do not meet the full requirement of Code.

Item	Code Requirement	PUD Proposal
Buffer Depth	15 feet	15 feet
Tree Count Calculation	One shade tree per 30 linear feet	One tree per 30 linear feet
Shrub Count	Five shrubs per 30 linear feet	No shrubs
Vegetation Type Ratio	33 percent has to be evergreen	30 percent has to be evergreen

Surrounding Context

Properties to the north are zoned SF-20 Single-Family Residential District (developed with a single-family dwelling and agricultural land in unincorporated Sedgwick County) and LC Limited Commercial District with CUP DP-276 (developed in the city of Wichita with the Northwest YMCA and associated ball fields, water park, and parking). Properties to the east is zoned SF-20, is in unincorporated Sedgwick County, and developed with a church. Properties to the south are zoned SF-5 Single-Family Residential District, are in the city of Wichita, and are developed with single-family dwellings. Properties to the west are zoned SF-20, in unincorporated Sedgwick County, and are developed with single-family dwellings.

Analysis: On August 10, 2023, the Metropolitan Area Planning Commission (MAPC) recommended approval (9-1-1) subject to the following changes to the PUD General Provisions. Several members of the public spoke in opposition to this application at this public hearing with general concerns about noise, lighting, traffic, decrease in property values, and possible future commercial uses on the site.

MAPC Recommended Changes to the PUD General Provisions

- Outdoor recreation hours of operation are limited to the following:
 - o 6:00 a.m. to 10:00 p.m. Sunday through Thursday; and
 - o 6:00 a.m. to 11:00 p.m. Friday and Saturday.

On August 7, 2023, District Advisory Board (DAB) V recommended approval (8-1) of the application subject to the following changes to the PUD General Provisions. Several members of the public spoke in opposition to this application at this public hearing with general concerns about noise, lighting, traffic, decrease in property values, and possible future commercial uses on the site.

DAB Recommended Changes to PUD General Provisions:

- Outdoor recreation hours of operation is limited to 6:00 a.m. to 10:00 p.m. daily;
- Noise compatibility shall meet all standards of the Unified Zoning Code;
- Limit Office and retail to the north 350 feet of the site;
- Require a 35-foot building setback along the north property line;
- Restrict building height to 45 feet; and
- Require Planning Commission approval for the Lighting Plan and Parking Plan.

One protest was filed in opposition to this application totaling 0.22 percent of the protest area. This does not meet the 20 percent threshold. Therefore, the request can be approved by a simple majority (or four of seven votes).

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 4 of 7 votes).

Alternatives:

- 1) Override the MAPC, adopt alternate findings, and approve the zone change request subject to DAB recommended changes to the PUD General Provisions (requires 5 of 7 votes);
 - 2) Override the MAPC, adopt alternate findings, and deny the zone change request (requires 5 of 7 votes);
- or
- 3) Return the case to MAPC for additional consideration (requires 4 of 7 votes).

Attachments:

1. Public Comment
2. MAPC Recommended PUD #115 Text
3. PUD Drawing
4. Protest Map
5. Aerial Map
6. Zoning Map
7. Land Use Map
8. Photos
9. MAPC Minutes
10. DAB V Report
11. Ordinance

Public Comment:

Written Comment to be Included in Staff Report (7-12-23): I live in the Silverton neighborhood, and I am concerned about the possible noise nuisance, diminished privacy, and bright stadium lights in the field north of the Silverton neighborhood if the YMCA creates ball fields in this field. It is also possible that there will be more parked cars of people attending the games and practice congesting my street if the YMCA creates ball fields in this field.

I am also concerned about the market value of my house decreasing because of the noise nuisance, activity, and bright lights in the potential ball fields. My house may be difficult to sell later on. My property taxes and house insurance keep going up every year, but I am afraid that the actual market value of my house will decrease and not really match the higher property taxes and insurance rates if there are ball fields right behind my backyard.

I don't have a fence on my property right now. I have recently signed a contract with a fence company to build a fence so that people attending the YMCA games/practice will not be tempted to park in front of my house and use my yard as a short route to the ball fields. The rest of the people on my side of the block all have fences in their backyards except me. However, people may still park on my street and enter the ball fields through the dead end in the middle of my street. If several people do this, it will congest the flow of traffic on my street.

I have talked to other people in my neighborhood, and they are also concerned about the ball fields as well.

I moved into my house 7 years ago because it is in such a nice, quiet neighborhood with just a field of crops behind my backyard. Crops don't make a lot of noise.

Written Comment for Staff Report: I forgot to state in the other email that I sent to you that I don't want the YMCA or anyone to develop the field at 135th Street into ball fields. Like I said in the other email, I am concerned about the noise, potential decrease in property values, street congestion, bright stadium lights, and diminished privacy. I would rather have this parcel of land be sold to a construction company so that houses can be built on it. People living in houses aren't going to be as loud as several children and/or adults on ball fields and a playground. Thank you for including this information in the staff report for the Planning Commissioners to consider.

I forgot to also mention that I'm concerned about baseballs, soccer balls, and footballs hitting windows on houses and breaking them out. I recently read The Wichita Eagle article dated July 10, 2023 titled, "YMCA Plans \$30 Million in Renovations, Upgrades Focused on Facilities for Kids, Families," and in the article it states that the youth complex at the Northwest YMCA will have fields for flag football, baseball, and soccer.

- Kelly Base-Simpson

Dear Philip,

I received the notification regarding the zone request in the city from SF-5 single family residential district to PUD planned unit development #115 to allow for the development of an athletic field at 21st and 135th street. I appreciate the notification.

I am opposed to the rezoning. I moved here a year ago because it is a residential neighborhood. I have invested in my property and love the neighborhood. I have several concerns about the rezoning.

- 1) property values will decrease.
- 2) increased traffic in a quiet neighborhood.
- 3) Increased lighting, noise and trash in the neighborhood.

Also the YMCA is located directly across 21st street with ample land to develop more athletic fields, I believe all of that should be kept together, not only for convenience but safety as well. When parents drop off kids for athletic

PUD2023-00007

practice or games many will go to the gym across the street to work out. Is the city planning to put in a light and a cross walk to accommodate both vehicle traffic and pedestrian traffic to cross 21st street safely?
All other YMCAs have all their fields and buildings in the same location.
Why are they not following suit?

I appreciate you and the council taking time to consider what is best for our neighborhood. I dont feel this proposed plan will be good for our neighborhood.

Thank You,

Lucy Lavelle
1906 N. Bellick

YMCA ATHLETICS
Planned Unit Development No. 115
Case Number: PUD2023-00007
Development Guidelines
General Provisions

PUD Purpose Statement:

This Planned Unit Development is intended to allow for the development of a mixed-use district with the primary land use being centered around that of Recreation and Entertainment, Indoor and Outdoors. It is anticipated, but not limited, that private athletic fields will be the primary outdoor recreation land use.

1. Area: This PUD contains 26.09 acres or 1,136,512 square feet, more or less.

2. Parcel Description:

Parcel 1

Gross Area = 26.09 Ac. or 1,136,512 sq. ft.

Maximum Building Height = As per LC with compatibility standards as per G.P. 3.F.a., herein.

Maximum Building Coverage = 35% or 397,779 sq. ft.

Max. Gross Floor Area = 35% or 397,779 sq. ft.

Building Setbacks:

25 feet on the North

60 feet on the West and South

20 feet on the East

3. Land Uses and Development Standards:

The following uses are permitted for Parcel 1:

- A. Auditorium or Stadium; Church or Place of Worship; Community Assembly; Day Care, General; Library; Parks and Recreation; Schools and/or University/College; Recreation and Entertainment, Indoor and Outdoor; Agriculture.
- B. Farmer's Market in the City is permitted and shall be subject to the Supplementary Use Regulations of the Wichita-Sedgwick County Unified Zoning Code of Sec.III-D.6.jj, provided that, this property shall not be required to comply with Sec.III-D.6.jj (5).
- C. Mobile Food Unit in the City is permitted provided the use is an accessory to the principal land use and shall be subject to Sec. 3.15 of the Code of the City of Wichita.
- D. Office, General; Retail, General; Automated Teller Machine; Event Center in the City, Personal Care Services; Personal Improvement Services; and Teen Club in the City are permitted uses, provided such uses are located within the north 750 feet of Parcel 1.
- E. Compatibility Standards:
 - a. Setbacks and Height compatibility standards are as follows: As per Wichita-Sedgwick County Unified Zoning Code Art. IV, Development Standards, Sec. C., Compatibility Standards 4. and 5.
 - b. Noise compatibility standards are as follows: As per Wichita-Sedgwick County Unified Zoning Code Art. IV, Development Standards, Sec. C.6., provided however, that the uses of outdoors sports/recreation shall be exempt, and provided, that projecting amplified music shall adhere to the standards.
 - c. Site design standards: As per Wichita-Sedgwick County Unified Zoning Code Art. IV, Development Standards, Sec. C.7.

- d. Hours of operation of Recreation and Entertainment Outdoor and accessory of such uses shall be limited to 6:00 a.m. to ~~11:00 p.m.~~ 10:00 p.m. Sunday through Thursday, and 6:00 a.m. to ~~12:00 a.m.~~ 11:00 p.m. Friday and Saturday.
- e. Access to the PUD shall be limited to arterial streets only.
- F. The land uses permitted by the PUD are only those uses permitted by right and not by conditional use unless specifically identified herein.

4. Landscaping:

- A. Landscape screening shall be in accordance with the City of Wichita Landscape Ordinance, as modified herein.
- B. Landscape buffers are to be used to meet the screening requirement. The landscape buffers shall be as follows: The landscaped buffer must be at least 15 feet in width and one shade tree and/or evergreen tree are required for each 30 feet in length of the buffer, with a minimum requirement of 30% the total trees shall be evergreen. Due to the land use, the east property line shall be exempt from landscape screening requirements. Exemptions to landscape buffer requirements are as follows: If drainage detention facility(s) create a minimum of a 100-foot buffer from the adjacent residential land uses the landscape buffer shall not be required at the property line.
- C. A landscape plan shall be prepared by a Kansas Landscape Architect for the above-referenced landscaping, indicating the type, location, and specifications of all plant material. This plan shall be submitted to the Metropolitan Area Planning Department (MAPD) for its review and approval prior to issuance of any occupancy permit(s).

5. Lighting:

- A. Lighting shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code, Section IV; and the amendments thereto, and as provided herein.
- B. All exterior pole lighting shall be shielded to direct light disbursement in a downward direction to prevent light trespass onto adjacent properties.
- C. The height of light poles, including pole base, is limited to 15 feet in height within 200 feet of residential zoning districts, except as provided herein. Light poles along the north and east property lines are not restricted 15 feet within 200 feet due to the existing land uses having light poles exceeding 15 feet in height.
- D. If outdoors sports/recreation facilities require light poles exceeding 15 feet in height to illuminate the outdoor facilities within 200 feet of residential zoning districts, such light poles shall not be permitted without the review and approval of a Lighting Study Plan. The Lighting Study Plan shall be submitted to the to the Wichita-Sedgwick County Planning for review and approval, as determined by the Zoning Administrator and the Director of Planning.

6. Screening:

- A. Trash receptacles shall be appropriately screened to reasonably hide them from street/alley view with fencing and/or landscaping.
- B. All rooftop mechanical equipment shall be screened from ground-level view from the adjacent residential areas and adjacent street right-of-way.
- C. Screening walls and/or fences are not required. They shall be substituted for a landscape buffer as per the conditions of G.P.4., herein.

7. Parking and Transportation:

- A. Minimum Off-Street Parking Requirements: Shall be provided as per a Parking Study provided at the time of development. The Parking Study shall be reviewed and approved by the Zoning Administrator prior to development.
- B. Fire lanes shall be in accordance with the Fire Code of the City of Wichita. No parking shall be allowed in said fire lanes, although they may be used for passenger loading and unloading. The Fire Chief or his designated representative shall review and approve the location and design of all fire lanes. Fire hydrant

installation and paved access to all building sites shall be provided for each phase of construction prior to the issuance of building permits.

- C. A plan for a pedestrian walk system shall be a requirement of this PUD. The walk system shall link facilities and buildings within the PUD to anticipated arterial street sidewalks.
- D. Other transportation circulation and/or infrastructure requirements shall be as per the recitals of the final plat approval.

8. Signs:

A. Signs are permitted under the current Sign Code of the City of Wichita as per LC Limited Commercial Zoning District (“LC”).

B. No building signage shall be visible from ground view from the residential land uses on the south or west.

9. Title: The transfer of the title on all or any portion of the land included in the Planned Unit Development does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land and be binding upon the present owners, their successors and assigns. However, the Director of Planning, with the concurrence of the Zoning Administrator, may approve minor adjustments to the conditions in this overlay, consistent with the approved development plan, without filing a formal Planned Unit Development amendment.

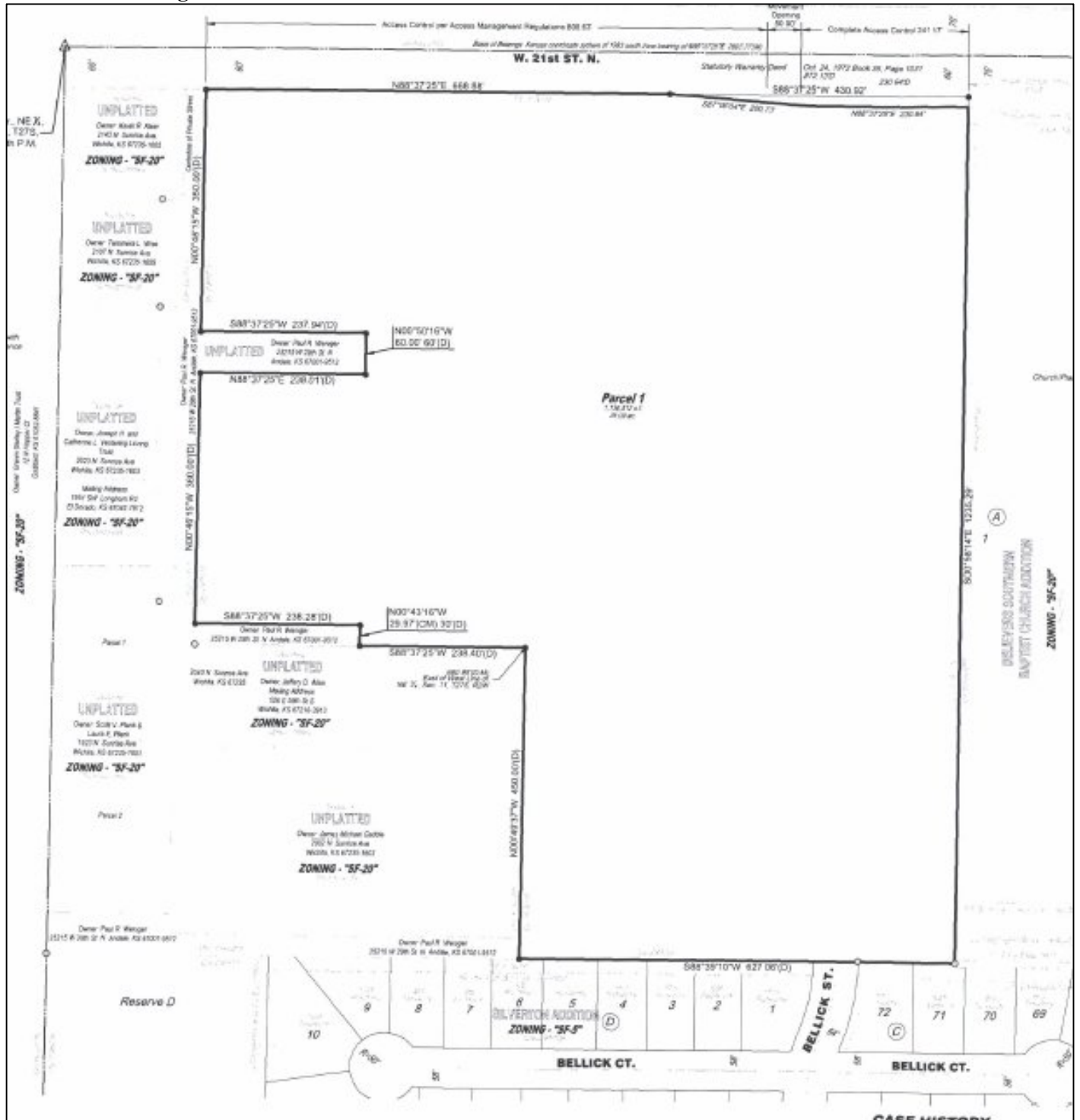
- a. Any major changes within this Planned Unit Development shall be submitted to the Planning Commission and the Governing Body for their consideration.
- b. Amendments, adjustments or interpretations to this PUD shall be done in accordance with the Unified Zoning Code, provided however, the boundary of the PUD may be adjusted administratively if the area of the boundary adjustment does not increase or decrease by 1 acre of land.

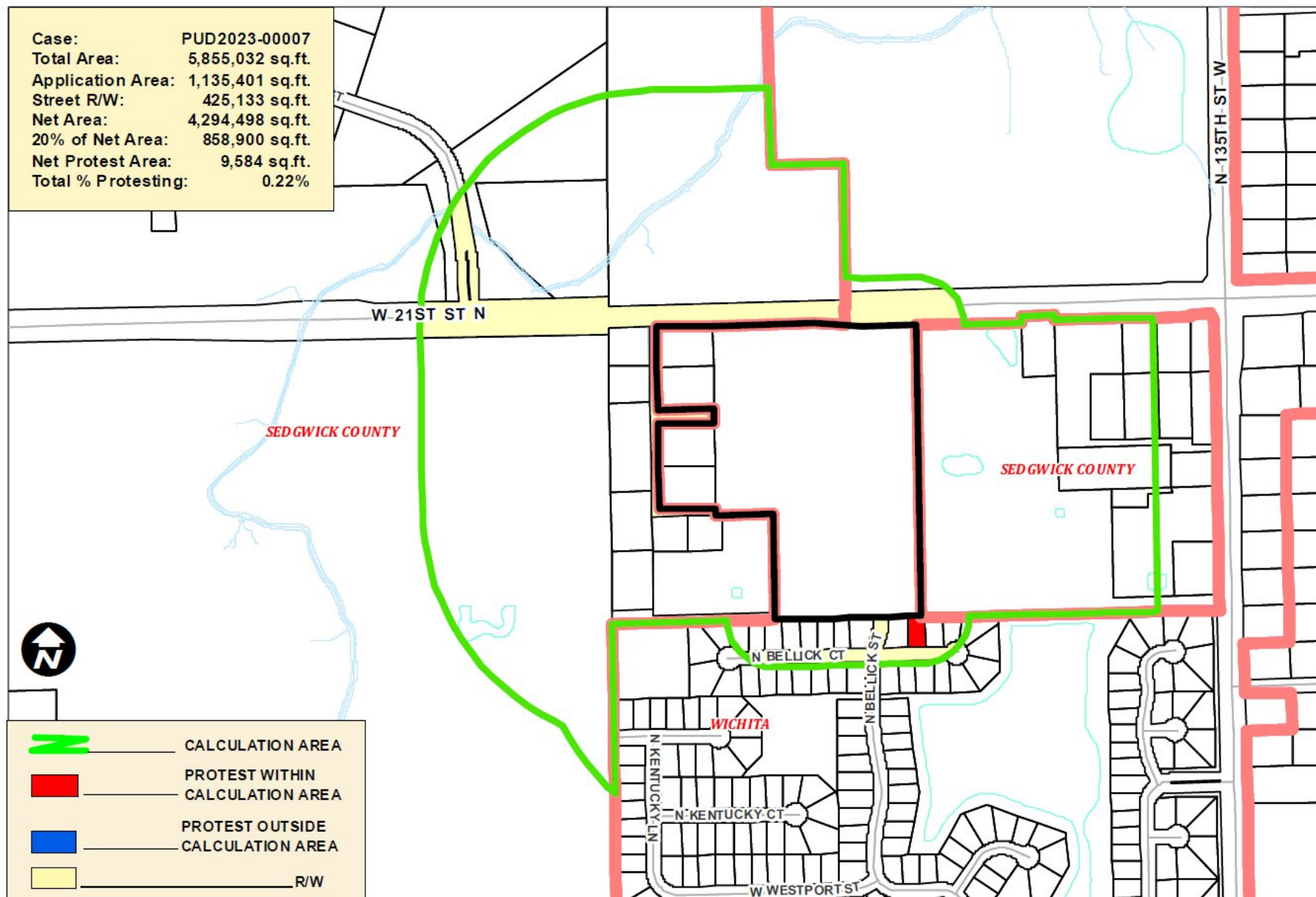
10. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.

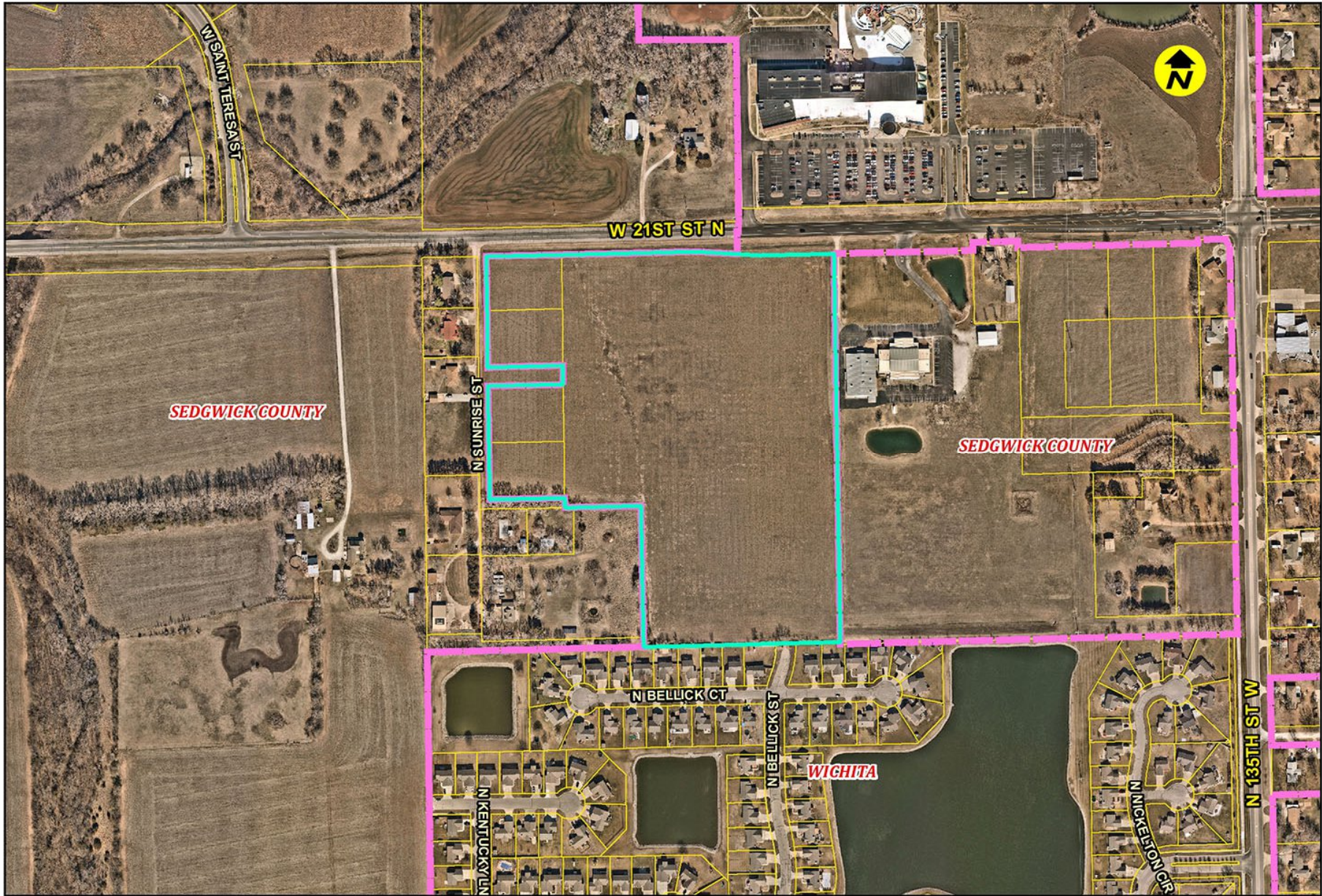
11. Amendments, adjustments or interpretations to this PUD shall be done in accordance with the Unified Zoning Code.

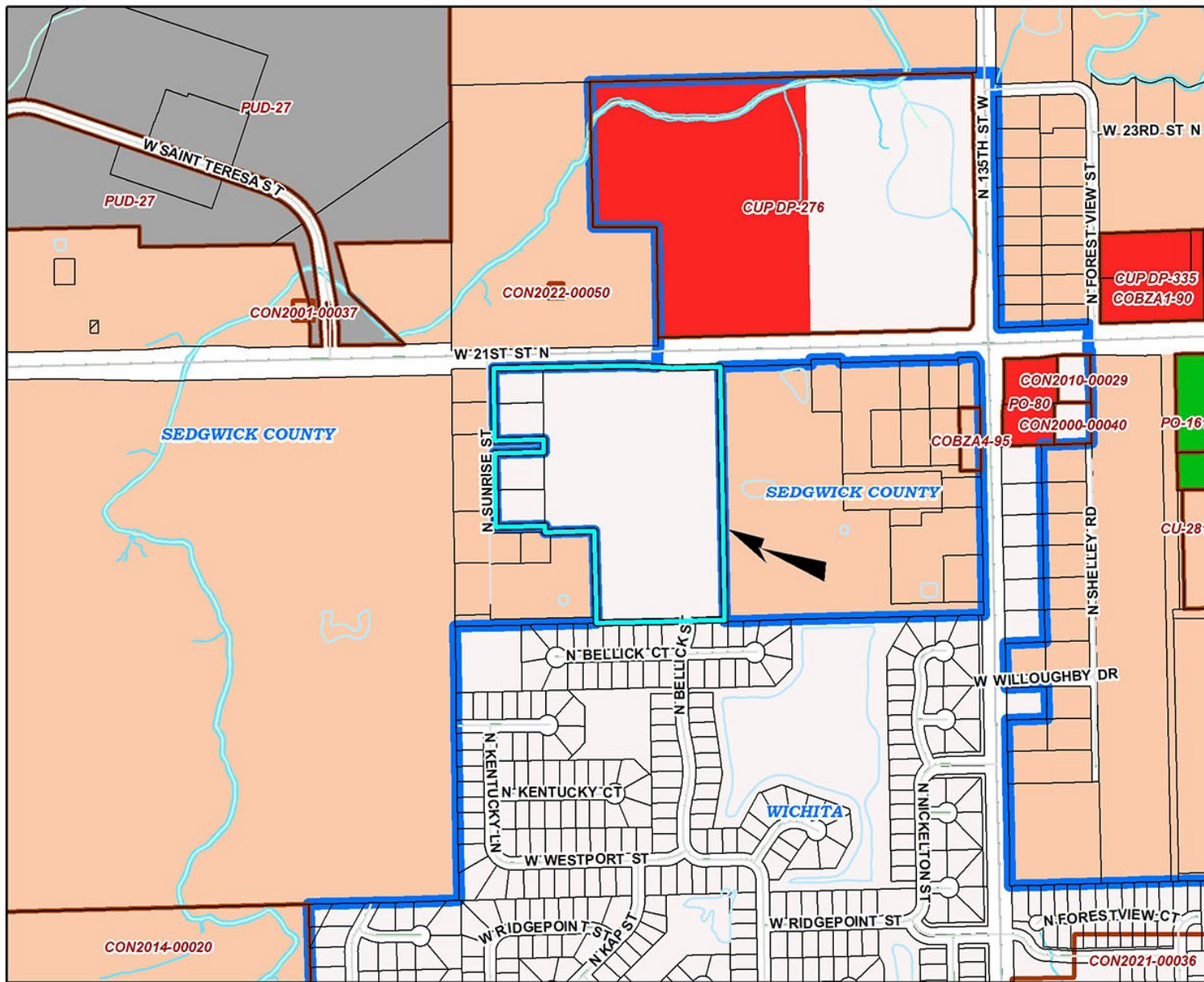
12. A certificate or Notice of PUD is required to be recorded with the Sedgwick County Register of Deeds Office upon approval of the PUD.

PUD #115 Drawing
















ZONING

- RR
- SF-20
- SF-10
- SF-5
- TF-3
- MF-18
- MF-29
- B
- MH
- NO
- GO
- NR
- LC
- GC
- CBD
- OW
- IP
- LI
- IP-A
- GI
- AFB
- U
- PUD
- AIRPORT
- OLD TOWN
- HISTORICAL
- DELANO



2035 Wichita Future Growth Concept Map

Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

Statistical Development Areas

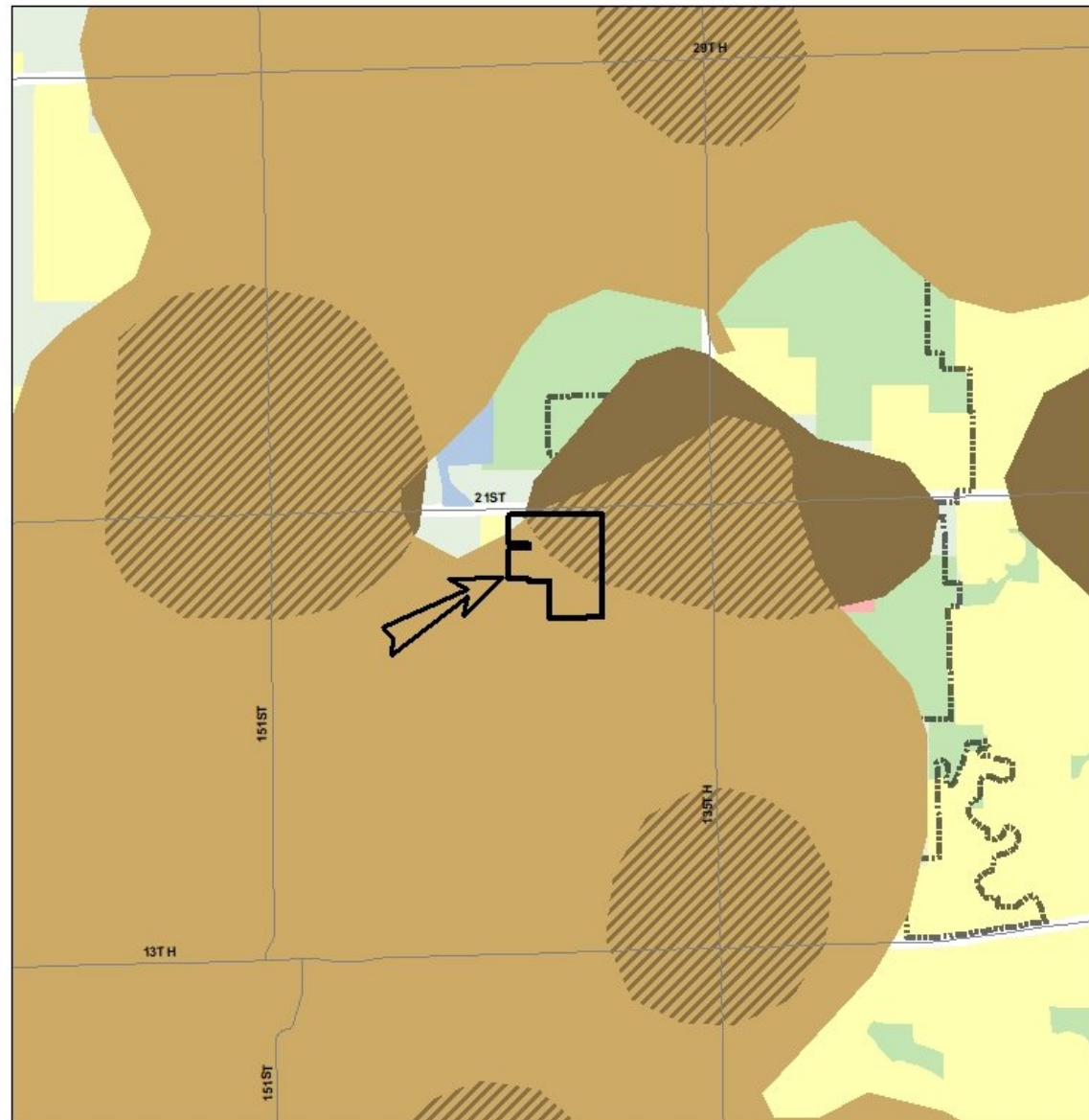
-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Nghbd_Plan_Areas



City of Wichita
Planning and Economic Development
2023-2035 Future Growth Concept Map
This map is a conceptual representation of future growth and is not intended to be used for legal purposes.
The map is based on the 2023-2035 Future Growth Concept Map and is subject to change without notice.
The map is not a guarantee of future growth and is not intended to be used for legal purposes.
The map is based on the 2023-2035 Future Growth Concept Map and is subject to change without notice.



Looking east toward site from Sunset Rd.



Looking north away from site at property west of YMCA



Looking west at residential on Sunset Rd.



Looking north away from site at YMCA



Looking southwest at and away from site



Looking southeast at houses south of site



Looking southeast at and away from site



Looking west at site



Looking north at residential property south of site



Looking north at street stub south of site



WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

EXCERPT MINUTES

August 10, 2023

4.2 PUD2023-00007: Zone change request in the City from SF-5 Single-Family Residential District to PUD Planned Unit Development #115 to allow for the development of an athletic fields; generally located one-quarter mile west of West 135th Street, on the south side of West 21st Street North.

Parcel 1: A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 50 feet South and 204.25 feet East of the Northwest Corner of the Northeast Quarter of said Section; thence East parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.67 feet; thence South parallel with the West line of the Northeast Quarter of said Section 11, a distance of 180.0 feet; thence West parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.8 feet; thence North 180.0 feet to the point of beginning, EXCEPT the North 10 feet thereof.

Parcel 2: A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 204.25 feet East and 230.0 feet South of the Northwest Corner of the Northeast Quarter of said Section; thence East parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.8 feet; thence South parallel with the West line of the Northeast Quarter of said Section 11 a distance of 180.0 feet; thence West parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.94 feet; thence North 180.0 feet to the point of beginning.

Parcel 3: A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 204.25 feet East and 470.0 feet South of the Northwest Corner of the Northeast Quarter of said Section; thence East parallel with the North line of the Northeast Quarter of said Section a distance of 238.01 feet; thence South parallel with the West line of the Northeast Quarter of said Section a distance of 180.0 feet; thence West parallel with the North line of the Northeast Quarter of said Section a distance of 238.15 feet; thence North 180.0 feet to the point of beginning.

Parcel 4: A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 650.0 feet South and 204.25 feet East of the Northwest Corner of the Northeast Quarter of said Section; thence South parallel with the West line of said Section 11, a distance of 180.0 feet; thence East parallel with the North line of the Northeast Quarter of said Section 11, a distance of 238.28 feet; thence North 180.0 feet; thence West 238.15 feet to the point of beginning.

Parcel 5: Beginning at a point 60.0 feet south and 441.92 feet east of the Northwest corner of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence east parallel with the North line of said Northeast Quarter of Section 11, a distance of 431.21 feet; thence easterly a distance of 200.73 feet to a point 75.0 feet south and 230.64 feet west of the Northeast corner of the West Half of the Northeast Quarter of said Section 11; thence east parallel with the North line of said Northeast Quarter, a distance of 230.64 feet to a point in the East line of the West Half of said Northeast Quarter; thence south along said East line of the Northwest Quarter of the Northeast Quarter, a distance of 1,235.0 feet; thence west parallel with the North line of said Northeast Quarter, a distance of 627.06 feet; thence north a distance of 450.0 feet to a point 680.95 feet east of the West line of said Northeast Quarter; thence west parallel with the North line of said Northeast Quarter, a distance of 238.40 feet; thence north a distance of 800.0 feet to the point of beginning.

AND

Beginning at a point 1,280 feet South and 174.25 feet East of the Northwest corner of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence North parallel with the West line of said Northeast Quarter, 272.1 feet; thence East parallel with the North line of said Northeast Quarter, 147.9 feet; thence North parallel with the West line of said Northeast Quarter, 147.9 feet; thence East parallel with the North line of said Northeast Quarter, 358.8 feet; thence South parallel with the West line of said Northeast Quarter, 420 feet; thence West parallel with the North line of said Northeast Quarter, a distance of 507.74 feet to the place of beginning, and EXCEPT a tract described as follows: A tract of land beginning at a point 322.15 feet East and 860.0 feet South of the Northwest Corner of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M.; thence South parallel with the West line of said Northeast Quarter, a distance of 147.90 feet; thence East parallel to the North line of said Northeast Quarter, a distance of 147.90 feet; thence North 147.90 feet; thence West 147.90 feet to the point of beginning.

AND

Beginning at a point in the West line of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, said point being 1,310.0 feet south of the northwest corner of said Northeast Quarter; thence east parallel with the north line of said Northeast Quarter, a distance of 681.53 feet; thence North 30.0 feet; thence west parallel with the north line of said Northeast Quarter, a distance of 507.24 feet; thence north parallel with the west line of said Northeast Quarter, a distance of 30.0 feet; thence west parallel with the north line of said Northeast Quarter, a distance of 174.25 feet to a point in the west line of said Northeast Quarter; thence south 60.0 feet to the Point of Beginning, containing 0.589 acres, more or less.

TOGETHER WITH,

Commencing at a point 174.25 feet east and 60.0 feet south of the northwest corner of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence east parallel with the north line of said Northeast Quarter, a distance of 30.0 feet; thence south parallel with the west line of said Northeast Quarter, a distance of 350.0 feet to the POINT OF BEGINNING; thence east parallel with the north line of said Northeast Quarter, a distance of 237.94 feet; thence south parallel with the west line of said Northeast Quarter, a distance of 60.0 feet; thence west parallel with the north line of said Northeast Quarter, a distance of 238.01 feet; thence north parallel with said west line of said Northeast Quarter, a distance of 60.0 feet to the POINT OF BEGINNING.

TOGETHER WITH,

Commencing at a point 174.25 feet east and 60.0 feet south of the northwest corner of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence east parallel with the north line of said Northeast Quarter, a distance of 30.0 feet; thence south parallel with the west line of said Northeast Quarter, a distance of 770.0 feet to the POINT OF BEGINNING; thence east parallel with the north line of said Northeast Quarter, a distance of 238.28 feet; thence south 30.0 feet; thence west parallel with the north line of said Northeast Quarter, a distance of 238.30 feet; thence north parallel with said west line of said Northeast Quarter, a distance of 30.0 feet to the POINT OF BEGINNING.

BACKGROUND: The applicant is requesting a zone change from SF-5 Single-Family Residential District to PUD Planned Unit Development to create the YMCA Athletics Planned Unit Development (PUD #115). The site is approximately 26 acres in size and is generally located on the south side of West 21st Street North and within one-half mile west of North 135th Street West. The site is made up of five parcels in the City of Wichita and is currently used as an agricultural field. The proposed PUD would permit the development of multiple athletic fields associated with the Northwest YMCA, which is located adjacent to this site on the north side of West 21st Street.

Land Uses

The primary function of the site is proposed to be multiple athletic fields to accommodate various recreation programs provided by the YMCA. This primary function is defined by the Unified Zoning Code (UZC) as Recreation and Entertainment Indoor and Outdoor. These use categories are generally defined as privately-owned establishments offering recreation, entertainment, or games of skill to the general public. It is important to note that the term “entertainment” in the use category definitions do not permit live music, DJs, karaoke, or other forms of entertainment as defined in Chapter 3 of the Wichita Municipal Code. Additional zoning action would be required in order to provide these forms of entertainment either indoors or outdoors on the subject site. The use of “Parks and Recreation” does not apply to the proposed use as “Parks and Recreation” is under the ownership or control of a public agency or homeowner’s association per the definition in the UZC. The existing YMCA facility adjacent to the north is a relatable example of both indoor and outdoor Recreation and Entertainment. This application is a proposed expansion of their campus.

The PUD proposes hours of operation for any outdoor Recreation and Entertainment uses and any uses accessory to outdoor Recreation and Entertainment. The PUD proposed these hours to be as follows:

- 6:00 a.m. to 11:00 p.m. Sunday through Thursday
- 6:00 a.m. to 12:00 a.m. (midnight) Friday and Saturday

Noise compatibility standards shall be per Section IV-C.6 of the UZC, which states: “*No sound amplification system for projecting music or human voices shall be permitted on any property zoned NO or more intensive if the music and/or voices can be heard within any residential zoning District that is located within a 500-foot radius of the subject site.*”. The PUD proposed that outdoor sports/recreation be exempt from this standard, provided that any amplified music will still be subject to it. In essence, the noise compatibility standard for outdoor sports and recreation would not apply to an amplified voice but does apply to any amplified music.

In addition to the primary use of the site, the PUD text proposes the following uses. Many of these are included in order to provide opportunity for appropriate redevelopment of the site if at any point in the future the athletic fields are no longer in use.

- Church or Place of Worship

- Community Assembly
- Day Care, General
- Library
- Parks and Recreation
- Schools and/or University/College
- Agriculture

The PUD also permits the following uses with customized standards:

- Farmer's Market in the City as an accessory use to a principal land use and subject to Supplementary Use Regulations found in Section III-D.6.jj, except for item #5.
 - o The full text of the Supplementary Use Regulations are attached.
 - o Item #5 states the following. The YMCA is requesting a waiver of these restrictions in order to operate on weekends.

Section III-D.6.jj.5: Farmer's Markets are temporary in nature and may operate no more than five calendar days per month only Monday through Friday during the months of April through October and only between the hours of 6 a.m. and 9 p.m., with the exception of Farmer's Markets operated on City-owned property.

- Mobile Food Unit in the City (Food Trucks) are permitted as accessory uses; and
- Office, General; Retail, General; Automated Teller Machine; Event Center in the City, Personal Care Services; Personal Improvement Services; and Teen Club in the City are permitted only within the north 750 feet of the site, which is approximately the north half to two-thirds of the site.
 - o From 21st Street, the western portion of the site, the property is approximately 800 feet deep. On the eastern portion of the site, the property is approximately 1,230 feet deep.

Setbacks and Building Height

The proposed building setbacks are as follows:

- 25 feet along the north property line
 - o This is a standard front setback for residential zoning districts but generally more restrictive than most commercial zoning districts.
- 20 feet along the east property line
 - o As an interior side setback, this is more restrictive than standard zoning setbacks in all zoning districts. Standard compatibility setbacks for commercial buildings next to residential zoning districts is between 15 and 25 feet.
- 60 feet along the west and south property lines.
 - o As a rear and interior side setback, this is more restrictive than standard zoning setbacks in all districts. Standard compatibility setbacks for commercial buildings next to residential zoning districts is between 15 and 25 feet.

The PUD permits building height to be 80 feet (per LC Limited Commercial District standards) provided that height compatibility standards of Section IV-C.5 of the UZC apply. Those standards state that a structure is limited to 35 feet in height when within 50 feet of a lot line of property zoned TF-3 Two-Family Residential District or more restrictive. This standard would apply to property lines on the east, south and west. Structures may achieve one foot greater in height for every three feet beyond 50 they are from said property lines.

Lighting

The proposed lighting standards are less restrictive than the standard set forth in Section IV-B.4 of the UZC. The PUD permits the height of light poles to 15 feet within 200 feet of residential zoning districts, except for areas near the north and east property lines. Properties to the north and east have light poles that already

exceed 15 feet in height. The standard in the UZC restricts the height of light poles to 15 feet when within 200 feet of residential zoning districts. The PUD requires all lights to be shielded to direct light disbursement in a downward direction to prevent light trespass onto adjacent properties. This is a standard provision per the UZC. In addition, the PUD requires a Lighting Study Plan to be reviewed and approved by Zoning Administrator and the Director of Planning for all lights that exceed 15 feet in height within 200 feet of the property line. The Lighting Study Plan will ensure that there is no light trespass over to surrounding, residentially-zoned, properties. For light poles located farther than 200 feet from the property lines, Section IV-B.4 of the UZC permits lights poles to not exceed a height that is equal to one-half the distance to the property line.

Parking and Sidewalks

Off-street parking requirements will be based on a parking study that will be submitted for review and approval by the Zoning Administrator prior to development. The PUD requires a pedestrian walk plan will identify the pedestrian walking paths within the PUD and their connection to any future sidewalks along West 21st Street North.

Signage

Signs are permitted as per the Wichita Sign Code for the LC Limited Commercial District. However, no building signage shall be visible from ground view from residential land uses to the south or west. The Wichita Sign Code permits LC-zoned properties to have the following regarding signage:

- Illuminated on-site ground or pole signs up to 25 feet in height provided the sign height may increase by five (5) feet for every permitted sign not utilized. Maximum height is limited at 35 feet;
- Up to eight (8) on-site ground or pole signs along West 21st Street;
- A total of 880 square feet of signage along West 21st Street with the maximum area of a single sign being limited to 300 square feet; and
- Building signs cannot be illuminated when within 150 feet of adjacent, residentially-zoned lots.

It is staff's opinion that permitted signs per the LC Limited Commercial District is appropriate considering that West 21st Street is an arterial street, along which higher intensity uses are likely to occur in the future as development along the corridor continues.

Screening and Landscaping

The PUD proposes no solid screening fences along the perimeter of the site. However, trash receptacles shall be appropriately screened from ground level view with fencing and/or landscaping. In place of solid screening along the perimeter of the property, the PUD proposes landscaping with the following provisions:

- Landscaping shall be in accordance with the Wichita Landscape Ordinance.
 - o This requires a landscaped street yard, parking lot screening, and parking lot trees along West 21st Street North.
- The PUD proposes to use 15-foot-deep landscape buffers with a required number of trees per 30 linear feet where 30 percent of the trees must be evergreen. Exceptions to the buffer include:
 - o Along the east property line due to the non-residential use to the east (church); and
 - o If a drainage detention facility along the property line creates a 100-foot buffer between residential land uses and the uses permitted by the PUD.

The proposed provisions for a landscape buffer in lieu of solid screening do not meet the full requirement of Code.

Item	Code Requirement	PUD Proposal
Buffer Depth	15 feet	15 feet
Tree Count Calculation	1 shade tree per 30 linear feet	1 tree per 30 linear feet

Shrub Count	5 shrubs per 30 linear feet	No shrubs
Vegetation Type Ratio	1/3 rd (33 percent) has to be evergreen	30 percent have to be evergreen

Surrounding Context

Properties to the north are zoned SF-20 Single-Family Residential District (developed with a single-family dwelling and agricultural land in unincorporated Sedgwick County) and LC Limited Commercial District with CUP DP-276 (developed in the City of Wichita with the Northwest YMCA and associated ball fields, water park, and parking). Properties to the east is zoned SF-20, is in unincorporated Sedgwick County, and developed with a church. Properties to the south are zoned SF-5 Single-Family Residential District, are in the City of Wichita, and are developed with single-family dwellings. Properties to the west are zoned SF-20, in unincorporated Sedgwick County, and are developed with single-family dwellings.

CASE HISTORY: The property is unplatted. Platting is required prior to development of the proposed athletic fields. No other zoning cases are associated with this site.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-20, LC with DP-276	Single-family dwelling, agricultural, Northwest YMCA
SOUTH:	SF-5	Single-family dwellings
EAST:	SF-20	Church
WEST:	SF-20	Single-family dwellings

PUBLIC SERVICES: West 21st Street North is a paved, two-lane, County arterial street with open ditches. The posted speed limit on this portion of West 21st Street 40 mile per hour. North Sunrise Street is a gravel private street. An unnamed private right-of-way extends perpendicular to the east from North Sunrise Street, and it is unimproved. This right-of-way is not included in the PUD boundaries and the YMCA does not own the rights to use it for access. Abutting to the south, North Bellick Street is a dead-end, stub street platted in the Silverton Addition. It is a paved, two-way local street with a sidewalk on the west side. The PUD requires access to the site from arterial street only and does not provide any access via North Sunrise or North Bellick Streets. Municipal water and sewer services are available to the site but will need to be extended to serve any facilities requiring public utilities. Wichita Transit does not provide regular bus service in this area.

CONFORMANCE TO PLANS/POLICIES: The requested zone change is in conformance with the *Community Investments Plan* 2035 Wichita Future Growth Concept Map. The Map identifies the area to be appropriate for “New Residential and “New Residential/Employment Mix.” The “New Residential” category not only accounts for future residential uses but accommodates pockets of major institution and commercial uses based on market drive factors. The “New Residential/Employment Mix” category anticipates higher density residential mixed with lower intensity commercial uses. An expansion of the existing YMCA facility along West 21st Street is appropriate considering these use categories.

The proposed rezoning is in conformance with the development pattern and land use compatibility locational guidelines of the *Community Investments Plan*. Development pattern guidelines support the expansion of existing uses to adjacent areas. Compatibility guidelines state that non-residential uses and residential uses should be separated by appropriate screening and buffering to ensure compatibility of uses. The proposed PUD contains screening, buffering, and other compatibility standards to ensure compatibility with the proposed use and the lower density residential nearby.

RECOMMENDATION: Based on the information available at the time of the public hearing, staff recommends **APPROVAL** of the application subject to provisions of the YMCA Athletics Planned Unit Development PUD #115, and subject to the following conditions:

1. The PUD shall be developed in accordance with the approved PUD language.
2. The applicant shall record a PUD certificate with the Register of Deeds indicating that this tract (referenced as PUD #115 YMCA Athletics Planned Unit Development) has special conditions for development on the property.
3. A copy of the recorded certificate along with four copies of the approved PUD shall be submitted to the Metropolitan Area Planning Department within 60 days of governing body approval, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses, and character of the neighborhood: Properties to the north are zoned SF-20 Single-Family Residential District (developed with a single-family dwelling and agricultural land in unincorporated Sedgwick County) and LC Limited Commercial District with CUP DP-276 (developed in the City of Wichita with the Northwest YMCA and associated ball fields, water park, and parking). Properties to the east is zoned SF-20, is in unincorporated Sedgwick County, and developed with a church. Properties to the south are zoned SF-5 Single-Family Residential District, are in the City of Wichita, and are developed with single-family dwellings. Properties to the west are zoned SF-20, in unincorporated Sedgwick County, and are developed with single-family dwellings.
2. The suitability of the subject property for the uses to which it has been restricted: The properties are currently zoned SF-5 Single-Family Residential District and are suitable for single-family residential development in addition to a number of civic uses such as church, golf-course, parks and recreation, schools, and minor utility.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The removal of restrictions has the potential to bring increased vehicular traffic, noise, and light pollution to the area. However, the provisions of the PUD include compatibility standards such as access control, hours of operation and restrictions in pole height designed to mitigate these possible negative impacts.
4. Length of time the property has been vacant as currently zoned: The properties have historically been used for agricultural purposes.
5. Relative gain to the public health, safety, and welfare, compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would permit the expansion of the existing YMCA facility. A gain to public health and welfare must be weight with possible detrimental effects on surrounding properties. The standards of the proposed PUD are deigned to mitigate possible negative impacts on surrounding properties. Denial may represent economic loss to the applicant.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The requested rezoning is in conformance with the *Community Investments Plan* as discussed in the staff report.
7. Impact of the proposed development on community facilities: The proposed uses will bring an increase of automobile traffic to the area during events in addition to possible increase in pedestrians crossing West 21st Street North from the YMCA facility to the athletic fields. Road infrastructure improvements are likely needed and could include acceleration/deceleration lanes, a middle turn lane, retention of on-street bike facilities, and a future pedestrian crossing light to the

YMCA facility to the north. Required improvements to road infrastructure will be determined at the time of platting.

8. Opposition or support of neighborhood residents: At the time of the publication of the staff report, staff has received public comments in opposition to this request with general concerns regarding noise, light, traffic, possible decrease in property values and negative impacts to the quality of life.

ALDRICH: I'm just curious as to why it's even on the agenda. Subdivision has not seen this. I know it's been deferred and Subdivision is looking at hearing this case on the 17th, so I'm just curious why it's on the full body now.

PHILIP ZEVENBERGEN, CURRENT PLANS DIVISION MANAGER: This is the zoning item to change the zoning on the land from SF-5 to PUD. I believe you are talking about the associated plat. The plat has been deferred but the zoning item has not. Presented the staff report and advised this case was heard by the District Advisory Board for District IV on Monday night. The recommendation of the District Advisory Board was to approve, however, they had six changes to the proposed PUD language. The applicant responded to those changes and you'll see in some cases they are in agreement with the DAB recommendation and in other places you're going to see that they have an alternative to the DAB recommendation.

FOX: The sports that they're playing on here – baseball, soccer and flag football were listed, I think.

ZEVENBERGEN: I will defer to the applicant and agent on that.

FOX: Remind me the fencing height that would be around this.

ZEVENBERGEN: The PUD was not requiring a new fencing. If the YMCA chooses to put one, the restrictions of the zoning code say that it cannot exceed eight feet.

BRIAN LINDEBAK, MKEC ENGINEERING, 411 NORTH WEBB ROAD, WICHITA, AGENT: The YMCA does plan to relocate their sports offerings that are currently at the Maize South Campus so that's the reasoning for this change of zoning classification and the subject property provides enough space for the facility to expand over time. The Ken Shannon Northwest YMCA across the street does not have ample room for this sort of activity and that was one of the things that was brought up in one of the letters as well as brought up at the DAB meeting. The YMCA staff has, this is an important point, communicated on a door-to-door basis, dating back to earlier this year in April. They've continued these communications with the affected property owners nearby just as a point to be very open and forthright with the neighbors so that's been helpful, I think, in getting some feedback from them. The Northwest YMCA is at the beginning design stages of this facility and as such, we don't have a site plan to offer to show you but the goal is to continue to work on that site plan, presuming this zoning is approved, and I'm certain that they'll provide the general public a site plan to review at their facilities at such time that it's known. As far as the goals, the goals are to construct turf fields on this property that promote healthy activities for all ages. As Philip alluded, we've been a very intentional designer on this property. We don't want to affect the neighbors as far as traffic on it. We've done so by limiting the access to the site be it 21st Street or arterial streets. We've been very thoughtful in how we've designed the PUD in regard to lighting. While we don't anticipate having any substantial lights on the property close to the neighbors, we also recognize that things change and if we wanted to, we think it's appropriate to have a lighting study done and provide that to staff for review and approval and we believe that staff has the technical ability to do so without having to come back through Planning Commission. One of the other concerns that came up was of course people parking throughout the neighborhoods and then walking to the site. We've addressed that because we intend to have a fence on the property line and that fence is going to be dual purpose, primarily for security

for the site, but then also for removing the idea of people parking in the neighborhoods and walking or climbing fences to get to the site. The fences are going to be tall enough that the people aren't going to want to climb over the fences so six to eight feet tall. And last, I think we've been a good neighbor in regard to just reaching out to and getting that input from others. One of the things that we did talk to the neighbors about it was just the use of the land. Certainly we also want to future proof the property and allow for some retail uses. I'll pull up this little board here and show you some things there in just a gif. Everybody knows who the YMCA is but it's good to reiterate that they continue to invest in our community, which is fabulous, a lot of companies don't do that, and they are giving all ages and background the necessary resources to gain a healthy and long-lived life with habits that they can take throughout their life. I'm going to pull up this board that I have here. The pink is the setback area that's required per the PUD and it's a substantial setback from the residential that's 60 feet. Again, that was with very intentional design that we don't want buildings that close to the property line. The orange line on the north, I believe it's orange, is the 350-foot mark that was referenced in the DAB comments. The green line on the south is the 750-foot mark and one of the reasons we have the green line is for the allowance of offices. If you could switch to the zoning map on the screen, there's certainly other land uses in the area, particularly like this green area that are dipping down into that are if you will and same with the Saint Teresa Hospital that is into the area as well, so there's a zoning character in the area of office space being in the realm of 750. We just want to be able to have the ability in the event that we need to have an office, which we do believe we will for this facility, to have it more embedded deeper into the site as opposed on the front edge of 21st Street so you'll see that in the response that we provided you. We would of course entertain the idea of approving per staff comments, but in the event that you did not choose to do that, we'd ask that you approve per our recommended motion here effectively the items in blue on the attachment, on your desk there.

FOX: The sports that they would be playing there, can you clarify what those are?

LINDEBAK: I think it's the similar type of offerings that they have at the YMCA – baseball, soccer, softball, other outdoor sports that would be on a field.

FOX: And I didn't remember that this was replacing the Maize School System stuff. Do they have bleachers and spectators at all these events, generally?

LINDEBAK: Yeah. The way that YMCA operates is that people bring their own chairs but it's not necessarily the case. We would maybe put bleachers out there at some point in time or maybe it's early on in the project. It'll be a phased project where it'll grow over time.

ZEVENBERGEN: I just wanted to clarify, just to make sure folks know, the Maize South Athletics is not moving here. The Y is currently using the Maize South Facilities and they're creating their own so Maize South Athletics will stay on their campus and this is just a YMCA.

FOX: Thank you for the clarification because there's a lot more people if it's the other way around. And then I understand the parking concern about the neighbors south, certainly if there was connectivity to that neighborhood, but I would also be concerned about I'm dropping my kid at the Y to play while I go watch the other kid at soccer and the traffic walking across 21st would be scary as heck when you think of the traffic on that street. Is there any plan to do a crosswalk, ask for a light or anything because of the connectiveness of those two organizations?

LINDEBAK: Sure. We've been looking at that as more of a platting item and we've been considering options there if the demand is there and if people are making those crossings. I don't know that that would be a day one sort of thing but it would certainly be something – obviously the YMCA wants to protect their clientele, that's paramount.

ALDRICH: Did you say that you do support the recommendations as given by staff

LINDEBAK: That's true, yeah, we would entertain those and that's honestly why we pulled the case so we could have it heard so that you would have these two options if you hadn't chosen to go on consent we would have the planner's recommendation.

GREENE: Could you explain again the location of the office building? Is it commercial or is it just going to be offices for the YMCA?

LINDEBAK: It would be an office for this facility here and if you're looking at the line on the map there it would be this more southern one. We tried to pick a spot where we thought that it's really unlikely that we're going to go more south in there but we've tried to give ourselves some leeway a little bit since design plans are still far from being done.

GREENE: I could see that office being multi-use as far as maybe concession stands or public restroom facilities for the athletes that are participating in those events and the spectators.

LINDEBAK: Correct. And if you read the staff report, we have allowed for other kind of nuanced sort of uses like food trucks and things like that. Again, not part of the necessary plans for today but we also don't want to limit ourselves for the future.

REVEREND JEFF MILLER, 1901 NORTH NICKELTON, WICHITA: First, I have a question. Who exactly owns this property?

FOX: What we'll do during the public testimony is you'd ask all the questions you have and then we'll ask the agent to come back and answer anyone's questions in a rebuttal.

MILLER: I'd like to know who owns the property. Also, just a comment made about the lights – there are lights at the church and therefore our lights a little bit different, I dare say that the church parking lights would probably be different than the lights that will be constructed at this facility, that is in number. I live there in Silverton and use the Northwest Y and I want to tell you it's full, it's busy now. As far as parking goes and you go adding more fields, more parking – the issue of parking really needs to be addressed, thought out and addressed intentionally because it's busy – we're full now at the Northwest Y. The other thing, I know the Sunrise Road because I go I ride bike clear out to 199th and come back so I know what the Sunrise Road is and if you're counting on that to be an access road, I think it's a foolish move. In my opinion, it's not an entry point or an access point – I think you need to think about that. Another thing too is as I live out there, I'm two miles west of New Market Square and one of the reasons I like our location is so I can be two miles to all the restaurants, to (inaudible) west and whatnot but I can get on my bike and man within five minutes I'm seeing wheat fields and whatnot so I would like to keep some of the rural aspect of this area so I just say as you're planning and thinking of proving this think about, and I heard about landscaping, and I also heard about fence, but if you can incorporate as much landscaping or green into this venture, I think it would be appropriate for the area and I sure would appreciate it. Now, the other thing as far as I hadn't heard about this is walk over bypass, I believe that it's going to cost more money and you're thinking about, well, if we need it down the road, I would say to you that you would show an example foresight if you would do it now, spend the money now, therefore, when everything starts to happen and people are running across 21st Street and whatnot and you have this pedestrian problem – having pastored churches and whatnot – I say exhibit foresight now, have the foresight now, to spend the money now, do the implementation now, and you have the issue addressed, you have the issue taken care of.

TAMARA WISE, 2107 NORTH SUNRISE AVENUE WICHITA: I am the second house in from 21st shown on the map. I purchased my home on Sunrise Avenue 27 years ago for its peaceful, quiet area as did other residents here. These proposed fields will change all of that. The PUD proposes that the sports recreation be exempt from the noise compatibility standards per section IV-C.6 of the UZC, which is stated in the PUD, in essence allowing amplified voice to affect residential areas. This is going to disturb nearby residents and interfere with their quality of living in their own homes. If you look at that picture of my neighbor's home, it's shown looking west to the houses from the field, you can see how close those houses are to a narrow private gravel drive that two cars can't even go past, that's how close we are going to be. In addition, this noise issue would be able to begin at 6:00 AM through 11 PM through the week – well, they've adopted this a little bit differently – well, maybe – and midnight on the weekends. I would request that to maintain our peace and quiet that it is zoned so that no projected music or amplified human voices shall be permitted if they can be heard within a 500-foot radius of the subject site. I think that's in the code – they're trying to change that. I would ask that more reasonable hours of operation are changed from 8 AM to 9 PM in order to also maintain neighborhood peace and quiet – not everybody wakes up at 6 AM in the mornings, especially on the weekends, and 9 PM at night would give people an hour to pack up by 10:00 and neighbors can still have some peace and quiet before they go to bed. You know, this morning, I was out there at 7:30 AM loving the peace and quiet, listening to the birds, and it hit me this is all going to change. Residents that have talked to Y reps, Metro Planning Department, and the developing agent for MKEC related to this project are receiving contrary comments as to whether or not there will be a fence. I'm hoping that since the fence is not in the PUD, but the Y is stating that this is going to happen, I hope that that really will. The YMCA has property to their east, and if they are not using all of this property, as you can see the two-thirds (inaudible) that they could actually do these fields.

ALEX MILLER, 1981 NORTH BELLA COURT, WICHITA: I think I share some of the similar concerns that everyone else has shared. Property value being the main one. Once the YMCA comes in, property values are going to tank. I live just south of the property that they're proposing and we're not thrilled about lights being part of this. I kind of having a feeling that with the hours that they're requesting that is probably going to be the case and even with light studies, the light is still going to bleed no matter what, so I have a major concern there. And then for continuation of this, how do we go about getting information about what the next steps are for this? I know the YMCA said that they're going to have plans that they'll present to the public. What is the timeline for that look like and can they give any details sooner rather than later so we don't have to be proactive and constantly pester them for more detail?

LINDEBAK: As to the pastor's or the minister's push about ownership – Great Plains United Methodist New Church Development; they're the owners of the property. He asked about the access to Sunrise; we've already stipulated that there's no access to Sunrise nor do we have the ability because it's a private road. As far as lights, we've talked about lights. A lighting plan is going to be presented in the sense that if its needed beyond the realm of what's allowed on the PUD that the professional staff here at the Planning Department will then look that over and work that out. The parking; we've talked about parking. Similarly, that's another thing that would be worked out with staff. There's a lot of variables there. We want to make sure that we have staff's input on that, that's why we've put that in there. As to Ms. Wise's concerns of hours of operation; I would just point out that across the street at the YMCA facility here that they open at 4:30 in the morning and so 6:00 is a departure from that, and that's of course for outdoor uses – 6:00. As far as the timeline and developing regarding Mr. Miller's comments; certainly the project is still unfolding, this is just the very first step in getting entitlement for zoning, next step would be platting and certainly site design, but I'm certain they'll be excited to share with the community what their plans are as soon as those plans become available.

ALDRICH: I'd like to make a motion to approve per staff comments and recommendations.

FOSTER: I'd like to second with one small correction. If we're talking about approving per the blue

items on the handout we got, which is the YMCA response to the DAB comments, the last line of item one, it says, 6 AM to 11 AM for Friday instead of Saturday hours. I assume that's supposed to be 11 PM. I want to make sure that's corrected. And are we including Mr. Aldrich, the DAB comments as part of this for the DAB response?

ALDRICH: No, my motion was per staff comments and recommendations.

FOSTER: Okay, so not these?

ZEVENBERGEN: The staff recommended PUD language is the attachment in the staff report. The additional attachment was the DAB recommendation and the applicant's response. None of these are technically endorsed by staff.

FOSTER: Okay, thank you for clarifying for me.

FOX: So, we have a motion on the table. Are you seconding?

FOSTER: I'm not seconding.

FOX: Okay, we have a motion to accept per staff comments.

GREENE seconded the motion.

FOSTER: I think there is some value in adjusting the operating hours, in particular to respond to the DAB's concern, midnight seems to me a little excessive for people who actually want to sleep in the neighborhood. I live a half mile from the new baseball stadium of the City and believe me, you can hear it.

WARREN: So, the motion for the very original staff report before the DAB took a look at it?

FOX: Correct.

WARREN: I wouldn't be in favor of that.

FOSTER: I guess I will make a substitute motion then. Can we do that?

ALDRICH: Before you do that, I don't have a problem amending my original motion to include the time change in blue given in the response.

HARTMAN: Are you going from 12 to 11?

ALDRICH: I'm sorry?

HARTMAN: Is that what you're changing from 12:00 to 11:00?

ALDRICH: Yes.

GREENE: And I would agree with that change as the second to that motion.

FOX: Amended motion and amended second.

WARREN: Is that incorporating all of these adjustments made from the DAB?

FOX: Only the time adjustment is in the amended motion and second.

MCKAY: So, the amendment is the part that's in the blue because what you're talking about from 6 to 10 is in the blue and then certain days of the week and then 6 to 11 certain days of the week, is that what you're talking about?

HARTMAN: Just that one item. None of the other items.

MCKAY: That's what I'm talking about; just that one item.

FOX: Just the time change. And you are intending by the days of the week variation?

ALDRICH: Yes, the response in blue.

FOSTER: As I understand everybody's motions, we're talking about doing per staff comments with the exception that the operating hours would now be 6 AM to 10 PM, Sunday through Thursday, and 6 AM to 11 PM, Friday and Saturday.

ALDRICH: Correct.

FOX: That's the motion and that's the second.

GREENE: The reason why I seconded that and am hesitant on agreeing with some of these other, specifically the lighting and parking studies, I don't see this body being the one that would have a keen insight on the lighting and how that may or may not affect the adjacent neighborhoods, along with the parking. I think that staff is obviously a lot more qualified in making those kinds of determinations.

FOX: Just as a general point of interest, the purpose of this board is to determine the use of the land and the appropriateness of the use of the land. For this purpose, the platting step will go through many of the details about traffic, parking, lighting, and etc.

J. JOHNSON: Because of our firm's close association with the YMCA, I need to abstain.

MOTION: To approve subject to staff recommendation with the exception of changing the operating hours of 6 AM to 10 PM, Sunday through Thursday, and 6 AM to 11 PM, Friday and Saturday.

ALDRICH moved, **GREENE** seconded the motion, and it carried (9-1-1), **WARREN** opposed, and **J. JOHNSON** abstained.



Interoffice Memorandum

To: City Council

From: Teresa Veazey

Subject: ZON2023-00027

Date: August 7, 2023

.....

On Monday, August 7, 2023, the Metropolitan Area Planning Department presented this case for consideration by the District 5 Advisory Board. Great Plains United Methodist New Church Development (Applicant); YMCA (Contract Purchaser); and MKEC Engineering (Agent) requested a zone change from SF-5 Single-Family Residential District to PUD Planned Unit Development to create the YMCA Athletics Planned Unit Development (PUD #115). The site is approximately 26 acres in size and is generally located on the south side of West 21st Street North and within one-half mile west of North 135th Street West. The site is made up of five parcels in the City of Wichita and is currently used as an agricultural field. The proposed PUD would permit the development of multiple athletic fields associated with the Northwest YMCA, which is located adjacent to this site on the north side of West 21st Street.

Representatives for the Contract Purchaser, Mike McKenzie, Adam Elliott, and Jason Pedigo with the YMCA, were in attendance.

A representative for the agent, Brian Lindebak with MKEC Engineering, was in attendance.

DAB members asked these questions and made these comments:

Q (DAB): Is the language in a PUD standard or was it customized in this instance?

A: A PUD is customized all the time. No PUD is the same.

Q (DAB): In this customized CUD proposal, they're wanting less trees, less shrubs and less percentage of evergreen?

A: They are matching one tree per 30 linear feet. They are less than what the code requires for shrubs; they did not propose any shrubs. Instead of 33% evergreen ratio, they proposed a 30% ratio.

C (DAB): I would ask for more landscaping.

A: Everything we've discussed is negotiable.

Q (DAB): Arterials--are most of the setbacks 35 feet for commercial uses?

A: Yes.

Q (DAB): The PUD allows for an 80-foot building height?

A: As you get farther in, you're allowed to go higher.

Q (DAB): We could have an 80-foot building off the 25-foot property line?

A: Yes

Q (DAB): Why ask for an 80-foot structure?

A: 80 feet is standard for a limited commercial zoning district. If our client is willing to reduce it, if that makes it more palatable, then we can explore that.

Q (DAB): How tall is the Y across the street?

A: About 45 feet.

Q (DAB): What about parking?

A: Parking would be done with a parking study. They Y may not need as much as the zoning requires, and they can share existing parking.

Q (DAB): Could this be considered Park & Recreation?

A: It is a private entity, the YMCA, so that's why it's not Park & Recreation.

Q (DAB): Will you go over the code requirements for trees & shrubs?

A: One shade tree per 30 linear feet. Shrub count is 5 per 30 feet. Vegetation ration is 30%.

C (DAB): I would ask for more landscaping. One of the major complaints from neighbors was about noise.

A: You have the opportunity to recommend additional landscaping. Those all are points that can be massaged through this process.

Q (DAB): If the YMCA goes away in 10 years, an apartment building could go up?

A (CM Frye): No, you can't have an apartment building. Not with the restrictions the PUD is putting on here. PUD only allows for office general, retail general, med center, personal care services.

Q (DAB): What building on the west side do we have that is over 80 feet high?

A: Grain elevators.

Q (DAB): If this were a public entity, like the City, in that case a zoning request wouldn't be needed?

A: Yes, it would be considered Park & Recreation. it's allowed in single family development. Maize South campus is SF5 zoning.

Q (DAB): Why are you not expanding to the east side of the Y's existing property?

A: It's not zoned correctly for it.

Q (DAB): The existing lot goes all the way to 135th. Why not use it?

A: There's not sufficient room for expansion.

Q (DAB): There will be possible pedestrian traffic and 21st is a busy street. Have you talked about a bridge going over?

A: We've discussed this but haven't resolved what path we're going to go on. It wouldn't be a bridge over due to cost or a tunnel underneath. The most reasonable would be a signal to cross.

Members of the public asked these questions and made these comments:

Q (Public): Everyone I've talked to on my street believes it's nothing but an athletic field. Is it possible to get a copy of the PUD?

Q (Public) We need a fence. People will use the dead-end on Bellick Court, to get to the ballfields. People will walk through our backyards to get to the ball fields because they'll park in front of our houses. I'll now have to lock my gate. Will there be a fence around the perimeter?

A: Sunrise is a private street and cannot be an access point.

Q (Public): I moved there knowing it was a residential area. Why is the land to the east of the Y not being used? It is not zoned right?

Q (Public): Is this a done deal? Has the Y already purchased this land?

A: The land sale has not closed. The Y doesn't own the property.

C (Public): My property value--I'm concerned about that. I saw surveyors on two occasions surveying that part of the street. Baseball is going to be loud; whatever they get now, we have to live with.

Q (Public) Is there any kind of limit on decibels of level of sound?

A: It's fairly restrictive. The City's Noise Ordinance has specific decibel levels on certain times of day.

Q (Public): There's a 60-foot buffer that will just have trees, no buildings. What about a buffer for the ball fields?

A: They would have to have 15 feet of landscaping on the south and the west.

Q (Public): Drainage swell will be behind my house on the south side?

A: We're going through the platting process. We'll set aside 95 feet from the property line and will use that section to put in a drainway that will have a total width of 95 feet.

Q (Public): Is it often full of water? Is it used for anything else? Will kids be around here playing?

Q (DAB): There is a shallow ditch there now and there's an empty lot. What will address that?

A: A drainage report will go with our platting. Those issues are vetted at those levels, and we can revise things accordingly. Drainage is important.

Q (DAB): How often do we limit the height from 80 feet to 45 feet?

A: Everything with zoning relates to what is around it.

A: The climbing wall is 80 feet tall.

Q (DAB): Can we limit the operating hours to outdoor activities?

C (DAB): I would not like to see them go this late, especially during the week.

C (DAB): If we do it until 10 pm and there's no amplified voice, is that better?

Q (CM Frye): Sunday-through Thursday until 10 pm & weekends until 11 pm?

A (DAB): Let's say 10 pm every night.

C (DAB): Knowing who the YMCA is over the years and who they are in our community, they make very good decisions about being family-oriented and being responsible. I support the amendment in full as is without any changes and with the protest period being available.

C (DAB): I do have some issues with the CUD as written. I'm open to adjusting the time regarding hours of operation. I would probably say 6 am to 10 pm. Part of me wants to get rid of office/retail all together. I understand you want to future-proof it but, at some point, you can come back to this board and ask for office/retail. It's on 21st Street and the 750 feet concerns me. I'd probably reduce it to 350 feet. I'd make it a 35-foot setback instead of 25. I would go 45 feet maximum building height. No need to be 80 feet. I would also make the lighting and parking plans go to the Planning Commission so it's public and not just to the director. Here's my problem with parking: if we reduce the parking on that lot, people will park on Bellick. If it's closer and the parking lot is full, that's where they'll park. On weekends, the Y parking is packed, especially if baseball is going on.

Q (DAB): Can we protest certain things?

A (CM Frye): Your opportunity to weigh in is on Thursday at MAPC meeting on Thursday.

C: To review the notes from our discussion:

- Adjust time frame to limit outdoor operations from 6 am to 10 pm daily
- Meet noise compatibility standards per zoning code
- No office/retail use or limit office/retail to 350 feet off 21st Street
- 35-foot setback on 21st Street
- 45-foot max building height restriction
- Light & Parking plans go to MAPC for approval, not the director

C (DAB): I'm a Y member. I've done business with the Y. Love the Y. Worked with people there for years. But we have to remember, this isn't the Y, this is long-term. They could sell the piece. If they haven't closed, everything could fall through, and we get what we get. I'll make the motion with six conditions:

- **Operation time outdoor from 6 am to 10 pm daily**
- **Meet noise compatibility standards per zoning code**
- **Limit office/retail to 350 feet off 21st Street**
- **35-foot setback on north property line**
- **45-foot max building height restriction**
- **Require Planning Commission approval of Lighting Plan and Parking Plan**

Action Taken: Motion to **APPOVE** the application **SUBJECT TO SIX AMENDMENTS** made by Trevor Kurth and seconded by Grace Coyne. **MOTION PASSED 8-1-0**

Respectfully submitted,

Teresa Veazey, Community Services Representative, District 5

(Published in the Wichita Eagle, September 22, 2023)

ORDINANCE NO. 52-259

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. PUD2023-00007

Zone Change Request from SF-5 Single-Family Residential District to PUD Planned Unit Development subject to the general provisions of PUD #115, on property legally described as:

Parcel 1:

A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 50 feet South and 204.25 feet East of the Northwest Corner of the Northeast Quarter of said Section; thence East parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.67 feet; thence South parallel with the West line of the Northeast Quarter of said Section 11, a distance of 180.0 feet; thence West parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.8 feet; thence North 180.0 feet to the point of beginning, EXCEPT the North 10 feet thereof.

Parcel 2:

A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 204.25 feet East and 230.0 feet South of the Northwest Corner of the Northeast Quarter of said Section; thence East parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.8 feet; thence South parallel with the West line of the Northeast Quarter of said Section 11 a distance of 180.0 feet; thence West parallel with the North line of the Northeast Quarter of said Section 11, a distance of 237.94 feet; thence North 180.0 feet to the point of beginning.

Parcel 3:

A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 204.25 feet East and 470.0 feet South of the Northwest Corner of the Northeast Quarter of said Section; thence East parallel with the North line of the Northeast Quarter of said Section a distance of 238.01 feet; thence South parallel with the West line of the Northeast Quarter of said Section a distance of 180.0 feet; thence West parallel with the North line of the Northeast Quarter of said Section a distance of 238.15 feet; thence North 180.0 feet to the point of beginning.

Parcel 4:

A tract of land in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, described as: Beginning at a point 650.0 feet South and 204.25 feet East of the Northwest Corner of the Northeast Quarter of said Section; thence South parallel

with the West line of said Section 11, a distance of 180.0 feet; thence East parallel with the North line of the Northeast Quarter of said Section 11, a distance of 238.28 feet; thence North 180.0 feet; thence West 238.15 feet to the point of beginning.

Parcel 5:

Beginning at a point 60.0 feet south and 441.92 feet east of the Northwest corner of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas; thence east parallel with the North line of said Northeast Quarter of Section 11, a distance of 431.21 feet; thence easterly a distance of 200.73 feet to a point 75.0 feet south and 230.64 feet west of the Northeast corner of the West Half of the Northeast Quarter of said Section 11; thence east parallel with the North line of said Northeast Quarter, a distance of 230.64 feet to a point in the East line of the West Half of said Northeast Quarter; thence south along said East line of the Northwest Quarter of the Northeast Quarter, a distance of 1,235.0 feet; thence west parallel with the North line of said Northeast Quarter, a distance of 627.06 feet; thence north a distance of 450.0 feet to a point 680.95 feet east of the West line of said Northeast Quarter; thence west parallel with the North line of said Northeast Quarter, a distance of 238.40 feet; thence north a distance of 800.0 feet to the point of beginning.

The YMCA Athletics Planned Unit Development (PUD #115) shall be subject to the following conditions:

1. The PUD shall be developed in accordance with the approved PUD language.
2. The applicant shall record a PUD certificate with the Register of Deeds indicating that this tract (referenced as PUD #115 YMCA Athletics Planned Unit Development) has special conditions for development on the property.
3. A copy of the recorded certificate along with four copies of the approved PUD shall be submitted to the Metropolitan Area Planning Department within 60 days of governing body approval, or the request shall be considered denied and closed.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Adopted this 19th day of September 2023.

Brandon J. Whipple, Mayor, City of Wichita

ATTEST:

Jamie Buster, City Clerk

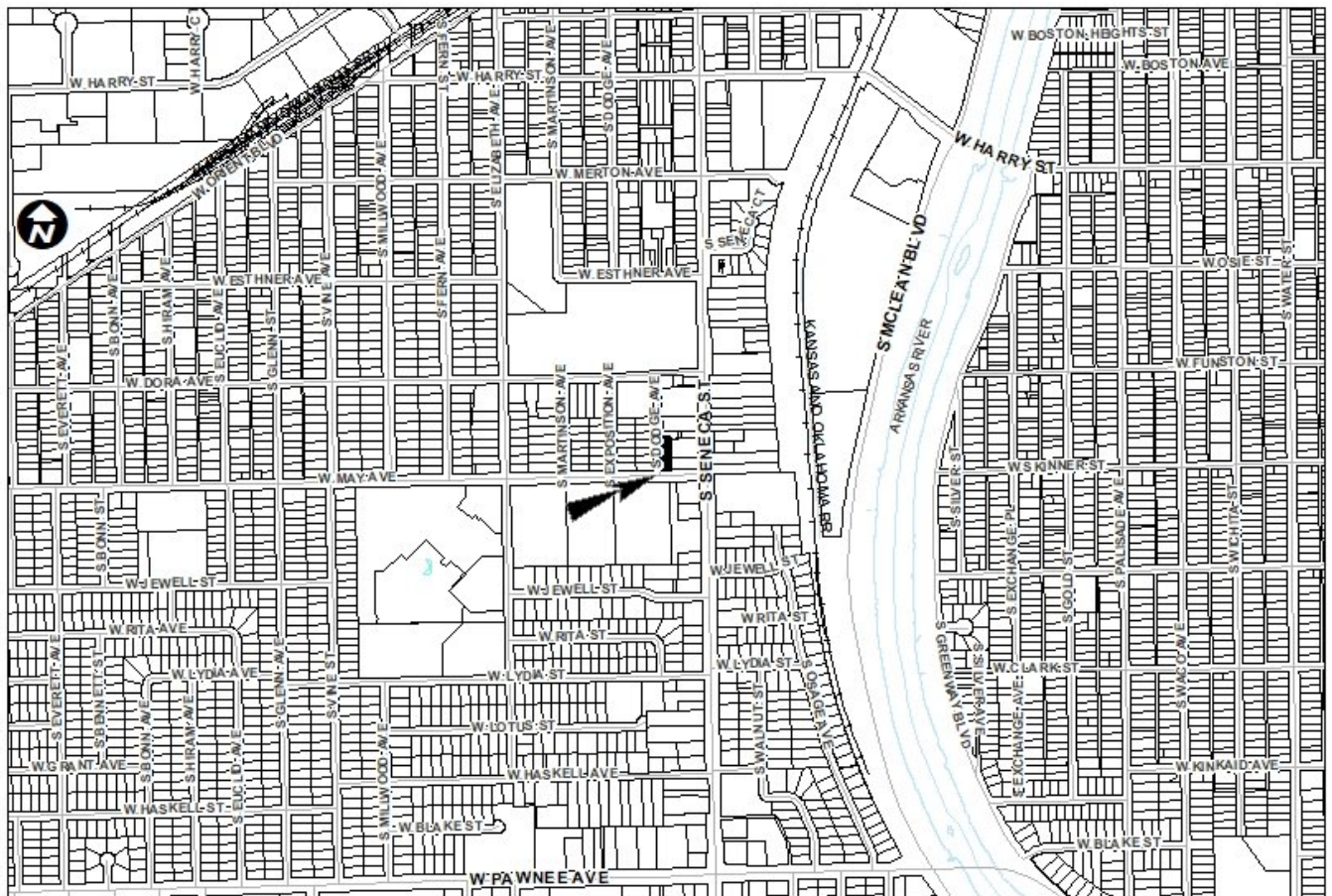
(SEAL)

Approved as to form:

Jennifer Magaña, City Attorney and Director of Law

AGENDA: Planning (Non-Consent)

DAB VI Recommendations: Deny (8-0).



Background: The applicant is requesting a zone change from B Multi-Family District to LC Limited Commercial District to allow commercial uses similar to the uses of the adjacent property (zoned LC Limited Commercial) owned by the same owner. The subject site is approximately 0.21-acres in size and is generally located on the northeast corner of May Avenue and Dodge Avenue (1222 West May Avenue).

The subject site is currently developed with a Duplex dwelling and a garage. The applicant intends to raze all existing structures and redevelop the site as a parking lot to the adjacent neighborhood shopping center, which according to the site plan will also be extended.

The subject site fronts West May Avenue and South Dodge Street and is part of the existing mixed-use corridor along the local street. In this area, moderate-intensity commercial uses abut high-density residential uses in the north, and west.

The property abutting the subject site to the north is zoned B Multi-Family District and is developed with a single-family dwelling. Property to the southeast of the subject site is zoned LC Limited Commercial, developed a neighborhood market owned by the applicant. The property to the northeast is also zoned LC Limited Commercial and developed with neighborhood retail. South of the subject site are properties zoned LC Limited Commercial District and GO General Office. West of the subject site are properties zoned TF-3 Two Family Residential District, developed with single-family residences.

The site plan shows a privacy fence on the North and part of the East lot line. In addition to this, the site needs to comply with the screening and landscaping requirements on the west as mentioned in Section IV-B.2 of the Unified Zoning Code (UZC) and Section 28.06.050 of the Landscape Code. The UZC requires the screening of commercial properties when abutting or across a street or alley from residential zoning districts. Landscape Code requires all new parking lots or additions to parking lots to be continuously screened from view from adjacent residential districts and certain types of streets when within 150 feet thereof (measured from the property line adjacent to the street), except at points of vehicular and/or pedestrian ingress and egress, to a minimum height of three feet above the parking surface by the use of Berms and/or plantings. A landscape plan must be submitted showing all required landscaping before the issuance of building permits. Additionally, as per Unified Zoning Code Section III-D.6.cc, the overnight parking of commercial vehicles exceeding 26,000 pounds gross vehicle weight rating shall not be permitted. Also, compatibility setback and height standards shall apply to this site, and any future development shall be in accordance with Sections IV-C.4 and IV-C.5 of the UZC.

Analysis: On August 10, 2023, the Metropolitan Area Planning Commission (MAPC) recommended approval of the application (11-0) per staff comments. There was one member of the public who spoke in opposition at the MAPC meeting, and he submitted letters of opposition on behalf of five other members of the public.

On August 7, 2023, District Advisory Board (DAB) IV reviewed the request and recommended denial (8-0) with the understanding that the parking lot is a permitted by right use in the B-Multifamily District. This is typically correct for parking that is an accessory to a principal use on the site. In this case, the use of the full site for the ancillary parking to serve the adjacent business requires a Conditional Use permit or a zone change. There was one comment from the audience.

Valid protest petitions have been received for the requested zoning change. It is 29.3% of the total real property within 200 feet of the subject site notified of the proposed action.

The request can be approved with a super-majority vote (six of seven votes).

Financial Considerations: Approval of this request will not create any financial obligations for the City.

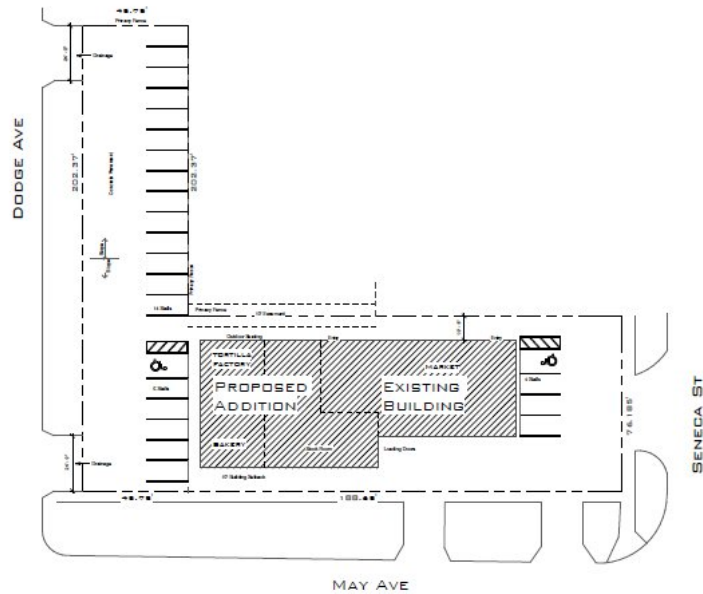
Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 6 of 7 votes).

Alternatives:

- 1) Deny the zone change (requires 5 of 7 votes); or
- 2) Return the case to MAPC for additional consideration (requires 4 of 7 votes)

Attachments: MAPC minutes, DAB IV Report, Ordinance, and Protest Map



CONCEPT PLAN A
1/8" = 1'-0"

TOTAL BUILDING AREA = 2,800 SF
24 PARKING STALLS SHOWN


RANDAL STEINER
ARCHITECT, P.A.
 848 S WESTSIDE LN
 WICHITA, KS 67209
 PHONE: 316.261.1840
 WEB: RASARCHITECT.COM
 RANDAL@RASARCHITECT.COM

Revision Schedule	
Revision Number	Revision Date

Preliminary Parking & Site Plan
La Tapata Market
 1977 S Seneca
 Wichita, KS 67213

SHEET
AS1.0








Parking & Site Plan








2035 Wichita Future Growth Concept Map

Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

Statistical Development Areas

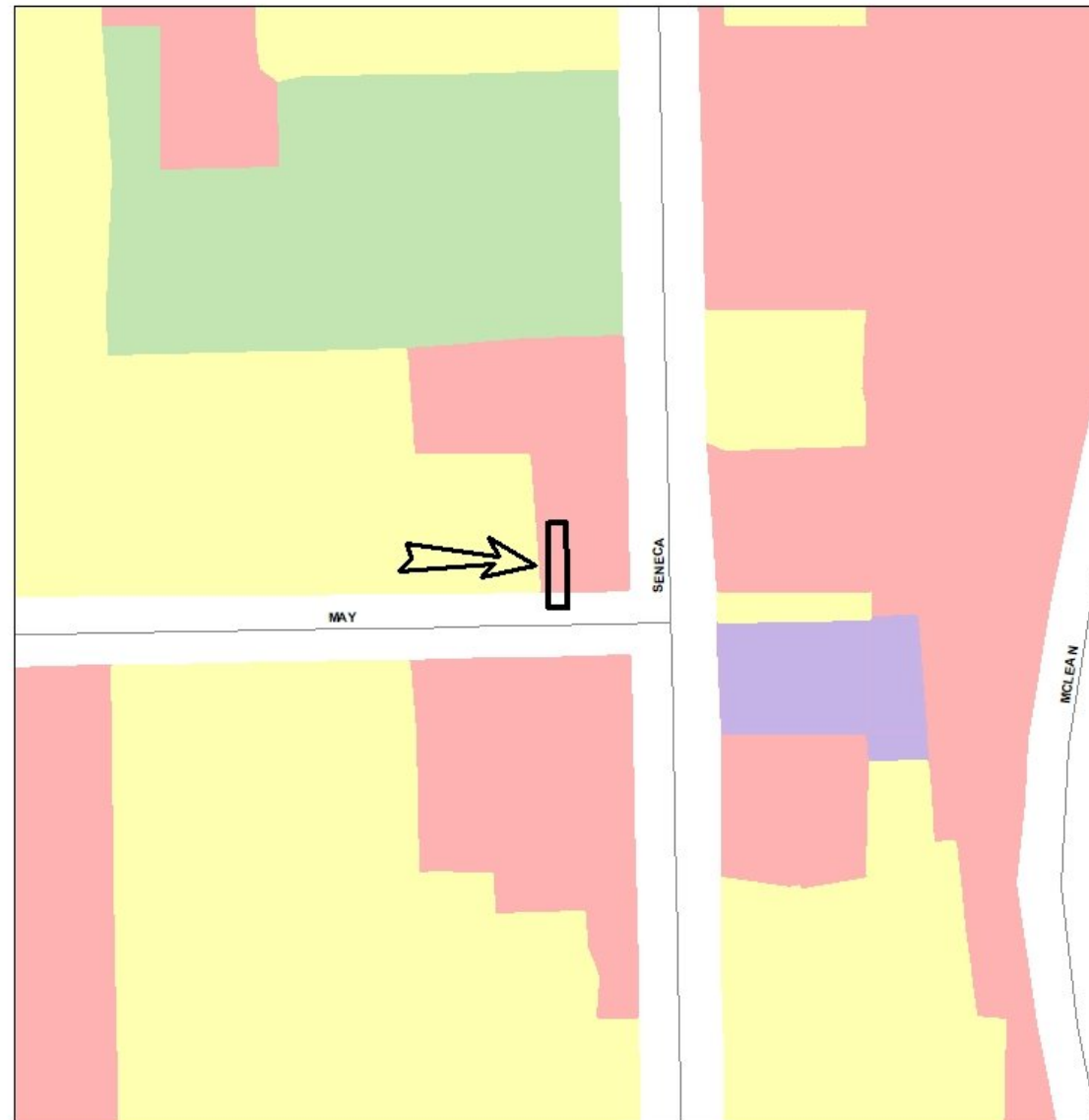
-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

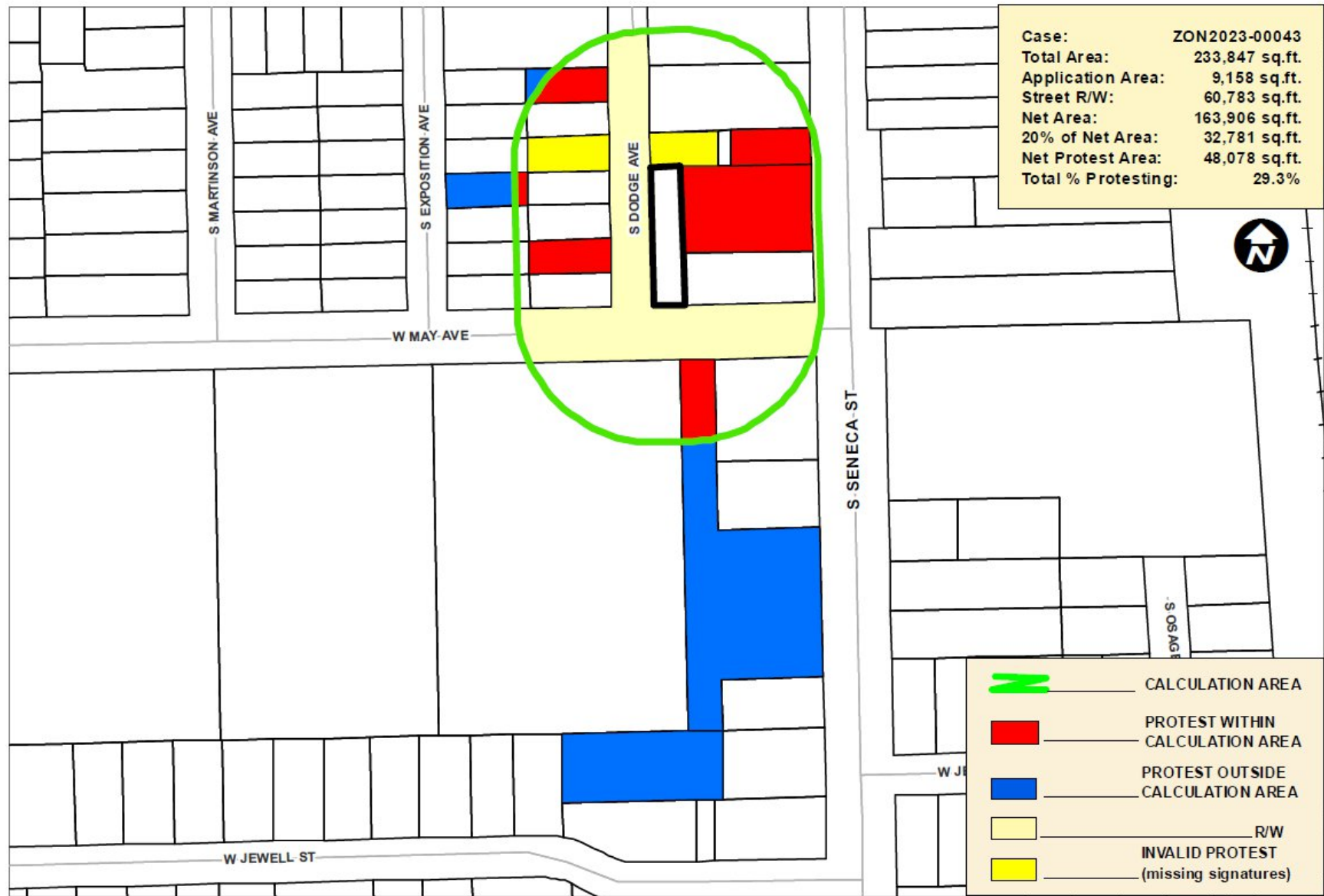
LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Nghbd_Plan_Areas



THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF THE CITY OF WICHITA. IT IS TO BE USED FOR THE PURPOSES SPECIFIED IN THE REQUEST FOR PROPOSALS. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE CITY OF WICHITA. THE CITY OF WICHITA ASSUMES NO LIABILITY FOR THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS CURRENT, COMPLETE, OR ACCURATE. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS FREE FROM ERRORS OR OMISSIONS. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS FREE FROM THIRD-PARTY CLAIMS. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS FREE FROM CONFLICTS OF INTEREST. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS FREE FROM LEGAL ACTION. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS FREE FROM OTHER RISKS. THE CITY OF WICHITA DOES NOT WARRANT OR REPRESENT THAT THE INFORMATION IS FREE FROM OTHER RISKS.







Looking toward the site from



South

Looking away from the



site from South
Single-family dwellings to West of the site



Looking towards the site from the East



Looking towards the site from North



Looking away from site from the North



Retail Offices developed South of the site along W May Avenue.

MAPC MINUTES | AUGUST 10, 2023

ZON2023-00043: Zone change in the City from B Multi-Family District to LC Limited Commercial District to allow commercial uses; generally located on the northeast corner of May Avenue and Dodge Avenue (1222 West May Avenue).

Lot 6, John F. Thomas Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting a zone change from B Multi-Family District to LC Limited Commercial District to allow commercial uses similar to the uses of the adjacent property (zoned LC Limited Commercial) owned by the same owner. The subject site is approximately 0.21-acres in size and is generally located on the northeast corner of May Avenue and Dodge Avenue (1222 West May Avenue)

The subject site is currently developed with a Duplex dwelling and a garage. As seen on the proposed site plan, the applicant intends to raze all existing structures and redevelop the site as a parking lot to the adjacent neighborhood shopping center, which according to the site plan will also be extended.

The subject site fronts West May Avenue and South Dodge Street and is part of the existing mixed-use corridor along the local street. In this area, moderate-intensity commercial uses abut high-density residential uses in the north, and west.

The property abutting the subject site to the north is zoned B Multi-Family District and is developed with a single-family dwelling. Property to the southeast of the subject site is zoned LC Limited Commercial, developed a neighborhood market owned by the applicant. The property to the northeast is also zoned LC Limited Commercial and developed with neighborhood retail. South of the subject site are properties zoned LC Limited Commercial District and GO General Office. West of the subject site are properties zoned TF-3 Two Family Residential District, developed with single-family residences.

The site plan shows a privacy fence on the North and part of the East lot line. In addition to this, the site needs to comply with the screening and landscaping requirements on the west as mentioned in Section IV-B.2 of the Unified Zoning Code (UZC) and Section 28.06.050 of the Landscape Code. The Unified Zoning Code requires the screening of commercial properties when abutting or across a street or alley from residential zoning districts. Landscape Code requires all new parking lots or additions to parking lots to be continuously screened from view from adjacent residential districts and certain types of streets when within one hundred fifty (150) feet thereof (measured from the property line adjacent to the street), except at points of vehicular and/or pedestrian ingress and egress, to a minimum height of three (3) feet above the parking surface by the use of Berms and/or plantings. A landscape plan must be submitted showing all required landscaping before the issuance of building permits. Additionally, as per Unified Zoning Code Section III-D.6.cc, the overnight parking of commercial vehicles exceeding 26,000 pounds gross vehicle weight rating shall not be permitted. Also, compatibility setback and height standards shall apply to this site, and any future development shall be in accordance with Sections IV-C.4 and IV-C.5 of the UZC.

CASE HISTORY: In 1952 the subject property was platted as part of the John F. Thomas Addition. There have been no other zoning actions on this site.

ADJACENT ZONING AND LAND USE:

North: B	Single-family Residence
South: LC & GO	Education and Healthcare Office and Retail
East: LC	Retail
West: TF-3	Single-Family Residence

PUBLIC SERVICES: The site has two access points from South Dodge Avenue, a paved two-lane

collector lane with no sidewalks on both sides. Wichita Transit provides regular bus service in this area with bus stops located along South Seneca Street. The site is served by municipal services.

CONFORMANCE TO PLANS/POLICIES: The proposed zone change is in partial conformance with the following plans:

Community Investments Plan: The *Community Investments Plan* (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Wichita Future Growth Concept Map. The Map identifies the area where the site is located to be appropriate for “Commercial” land use. This category “encompasses areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with Residential Uses.”

The *Community Investments Plan* provides locational guidelines to serve as a framework for future land use decisions. These are provided generally and for specific geographic areas. The subject site is located within the Established Central Area (ECA), described by the *Plan* as “the downtown core and the mature neighborhoods surrounding it.” Locational guidelines for the ECA state that neighborhood-serving retail and office uses can be appropriate on infill sites or through the conversion of existing structures if “the scale of the development is appropriate for its context.” Properties to the west of the subject site are developed with low-density residential housing. Approval of the requested zone change to LC Limited Commercial may be detrimental due to the lack of buffer between the residential to the west and the higher-intensity commercial uses to the east of the site. Also, it would permit a wider variety of uses than GO General Office especially if commercial parking is the intended use of the subject site. If the subject site is approved for the GO General Office zoning classification, the future site development would be a good transition between the development existing along the commercial corridor to the south and east and the low-density residential development to the west.

Additionally, the locational guidelines recommend that commercial uses developed near established residential areas have site design features that mitigate potential negative impacts of commercial use. In this case, the screening and landscaping proposed or recommended along the perimeter of the subject site and the compatibility standards provide conformance with this element of the *Plan*.

Wichita: Places for People Plan: The requested zone change is not in conformance with the Wichita Places for People Plan. The *Wichita: Places for People Plan* provides recommendations for urban infill development in the Established Central Area (ECA). In general, the ECA is envisioned as “a place for people - a place that provides for the movement of people - on foot, on bike and through transit - in balance with automobiles.” Ensuring development follows a nodal pattern “which creates a critical mass of activity at the center and transitions in scale and intensity” is key to realizing the goals of the ECA. The subject site is located within the half-mile buffer zone of the Neighborhood Hub located at West Harry Street and South Seneca Street, as designated by the *Places for People Plan*.

Strategies: The *Wichita: Places for People Plan* emphasizes the importance of neighborhood context in ensuring the success of infill development within the ECA. Specifically, it recommends the “organization of places based on their scale or intensity of development,” allowing infill development “to be better integrated into the context” it serves. Approval of the staff-recommended General Office zoning would allow the site to be developed to meet the parking requirements of the neighborhood-serving commercial uses in the adjacent lot and at the same time would only permit uses of a lesser intensity on the site, ensuring future development could be integrated into the context of the neighborhood.

Current Condition: The subject property is located within an “area of opportunity,” defined by the *Plan* as areas that “generally exhibit economic challenges, a disconnected development pattern, and a lack of

walkable places and facilities. These areas need strategic investment, both public and private, to assist in redefining and reinvigorating the area.” Rezoning this property as GO would permit redevelopment consistent with the existing development pattern of the community and support the neighborhood retails.

RECOMMENDATION: Based upon the information available at the time the staff report was completed, staff recommends **DENIAL** of the request to rezone to LC Limited Commercial, but recommends **APPROVAL** changing the zoning classification to GO General Office.

This recommendation is based on the following findings:

1. The zoning uses and character of the neighborhood: The subject area is generally characterized by commercial uses and zoning fronting South Seneca Street and May Street, and high-density residential uses and zoning abutting these to the west and north. Properties abutting the subject site to the east are zoned LC Limited Commercial District and developed with neighborhood market and strip retail center. South of the subject site are properties zoned LC Limited Commercial and GO General Office, used as retail offices and education and health care offices. Farther south, and to the west of the site, are properties developed with multi-family residences and single-family dwellings. North of the subject site is a property zoned B Multi-Family Residential District and developed with a single-family residence.
2. Extent to which removal of the restrictions will detrimentally affect nearby property: The subject area is of a mixed-use character, and the residential neighborhood west of the site has existed abutting commercial uses along West May Avenue for several years. The requested Limited Commercial zoning may be detrimental by permitting a wider variety of uses than what is the current intent of usage at the site. The recommended General Office zoning is recommended to reduce the detrimental effects at the same time permit the intended use of the site. The screening and compatibility requirements should mitigate any other possible negative impacts on the adjacent residential neighborhood.
3. Length of time subject property has remained vacant as zoned: The property is not currently vacant. The duplex dwelling was built in 1952.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the staff-recommended request represents a gain to the public in that it contributes to supporting economic opportunity in the area. However, any gain must be considered in light of the possible negative impacts on public welfare, including the adverse effects on neighboring properties due to light and noise pollution. Denial of the staff-recommended request could represent a loss in the use and enjoyment of the applicant’s property.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request to rezone to Limited Commercial is in partial conformance with the *Community Investments Plan* and the *Place for People Plan* as discussed in the staff report. The staff recommends rezoning the site to General Office
6. Impact of the proposed development on community facilities: An approval of the staff-recommended request should not generate any additional impact on community facilities. The existing infrastructure at the site will accommodate the proposed use.
7. Opposition or support of neighborhood residents: At the time of publication of the staff report, the staff has received one public comment opposing the rezoning request as it may negatively affect

their business.

MOUMITA KUNDU, PLANNING STAFF: Presented the staff report.

MCKAY: In B Multi-Family, can you utilize that as parking?

KUNDU: In the B Multi-Family, you can have ancillary parking with a Conditional Use permit.

KIRK MILLER, K.E. MILLER ENGINEERING, 117 EAST LEWIS, WICHITA, AGENT: As you can see from the site plan there's an existing structure and they want to add onto it. It's going to be a neighborhood market type of thing and they need the parking and that's what this is all about is to get them parking for that use that they have. We went to DAB with it earlier this week and it was the use of B1 for ancillary parking was misrepresented as it was an actual use as opposed to a Conditional Use. So, if we did it as a Conditional Use on B1, we'd still be back up here, but we're fine with going GL because all we're looking for is parking.

FOX: And so with the denial of Limited Commercial and the approval of General Office, you accept all staff comments?

MILLER: Right. Maybe in the far future, west of the proposed addition, at some point, they may want to add on there but then they don't have enough parking if they do, so they'd have to find additional parking. So, it's either we could come back at that time, try to get some LC then, or if we get that LC now, we're still just going to park on it, but it would save a trip back in the future, if it ever goes that far, which it may or may not.

FOSTER: You say neighborhood market, is that like a small grocery store, is that what we're talking about?

MILLER: Right.

FOX: No gas?

MILLER: No gas.

DAVE CROCKETT: I'm an attorney here in Wichita and I represent Mr. and Mrs. Baker, who own the frontage on Seneca, which is zoned Light Commercial. They are opposed both to the Light Commercial application and also to the General Office application, and the basis for their concern is what the applicant has very candidly admitted is the applicant's desire to stack parking in what is currently a residential zoning area, occupying most of the south part of Dodge Street, on the east side, and the proposed addition building as it's marked here, it shows that it would be used as a tortilla factory and it will be used as a bakery. Now, we learn that it's going to be used as a grocery store and we oppose these because they're not consistent with General Office. The purpose of General Office, according to the code, is to promote office use, not retail use. So by shying off a Light Commercial and saying, gee, we'll take GO because we'll get to stack our parking in, I don't think that should fly, so we are opposed to any zoning change in this matter.

FOX: And you're representing the owners of the business that are like behind, I want to say north or south, but it's behind?

CROCKETT: Directly east of this. They face Seneca.

FOX: And what's the nature of that operation?

CROCKETT: It's a small strip center, it contains three or four tenants, and it's consistent with Light Commercial zoning.

MILLER: As you can see on the site plan, the addition to the building, that still falls within the current LC zoning, so there really is nothing to stop that from happening; it's within the current property uses. Like I said, all we want to do with that area on the south is park it. If you look at the neighborhood along there, you've got a big chunk of the north side of this, you have the small area after this, and if you look at the zoning is B1 but then there's a lot of LC north of that, so this is not a new use, even on Dodge Street.

FOX: And parking on that residential street, there's really not much access there for additional vehicles?

MILLER: Right.

FOSTER: I'd just like to say I know we in general don't like to see housing demolished in favor of parking, but I live a few blocks west of Seneca, a mile or so north of here, in a very similar mixed-use neighborhood, and our little Braum's Marketplace grocery store is incredibly important to the quality of life. Those of us who live near the City are a long way from those big box stores out in the 'burbs, so being able to have this sort of resource, I think is important to this sort of neighborhood. I don't know if anybody else has any comments but if not, I would make a motion.

ALDRICH: We've got seven of the neighbors here it look like they are speaking in opposition and I think we ought to at least consider those neighbors that live right there on what they think about it, and again, you have seven different signatures right here, opposing this.

GREENE seconded the motion.

FOSTER: I don't know that I really clarified the motion, but I move to approve per staff comments with the GO zoning.

FOX: Motion to approve denial of Limited Commercial, approval of General Office per staff comments. We have a second. The discussion is we do have some residential persons nearby who did write in letters of opposition. Any other discussion on the matter?

ALDRICH: I'd like to make a substitute motion to recommend denial not only of the LC but also denial of the GO.

MILES seconded the substitute motion.

FOX: We have a recommendation of denial of General Office and Light Commercial by Commissioner Aldrich with the second by Commissioner Miles. Any further discussion on that item?

GREENE: I did an ownership search on this on the west side of Dodge and four of the seven lots there are not owner occupied. I don't know if that makes a difference in the conversation but they are not owner occupied so they're tenants.

FOX: And my comment on that is in America you no longer have to be a property owner to vote so I think that's something we need to consider when we're thinking that of a neighborhood. Some people who are long-term renters because they can't own are probably still paying taxes through their rent.

SUBSTITUTE MOTION: To deny GO General Office and LC Light Commercial recommendation.

ALDRICH moved, **MILES** seconded the motion, and it failed (5-6), **FOX, GREENE, FOSTER, WARREN, J. JOHNSON and HARTMAN** opposed.

MOTION: To approve GO General Office subject to staff recommendation.

FOSTER moved, **GREENE** seconded the motion, and it carried (6-5), **DOOL, MCKAY, MILES, ALDRICH and WILLIAMS-BEY** opposed.



Interoffice Memorandum

To: Metropolitan Area Planning Commission (MAPC)

From: Brooke Kauchak, District 4 Community Services Representative

Subject: 2023-08-07 DAB 4 Feedback on **ZON2023-00043**

Date: August 18, 2023

On Monday, August 7, 2023, the District 4 Advisory Board heard information on a Zone change request on behalf of Eduardo Mora (Applicant) and K.E. Miller Engineering (Agent) in the City from B Multi-Family District to LC Limited Commercial District to allow commercial uses, generally located on the northeast corner of May Avenue and Dodge Avenue (1222 West May Avenue). The public hearing for this request will be held on Thursday, August 10, 2023, at 1:30 pm. Attendees may participate virtually via zoom or in-person at the Ronald Reagan Building, 271 West Third Street, 2nd Floor, Wichita, KS 67202.

Action Taken: Denial for any rezoning. Motion approved **8-0-0**.

ZON2023-00043 Staff Report: <https://www.wichita.gov/Council/DABAgendasMinutes/2023-08-07%20DAB%204%20Item%208%20ZON2023-00043.pdf>

The site is currently zoned GC General Commercial District with CUP DP-268. The Site is 0.54 acres and generally located on the northwest side of West Kellogg Drive, within 300 feet west of North Tyler Road. Based upon information available prior to the public hearings, planning staff recommends Denial for LC Limited Commercial but Approval for GO General Office.

- Monday, August 7, 2023, | 6:30 p.m. | Alford Branch Library | Zoom & Facebook
- 8 DAB members were present (Council Member Blubaugh attended via Zoom)
- 22 members of the public were present (1 attended via Zoom)
- There were 43 views, 3 likes, 77 impressions and 60 people reached on the District 4 Facebook
- Video of the meeting: <https://fb.watch/mvxEr8hNz-/>

Feedback and information from the meeting is captured below:

DAB (Q): General Office still permits the owner to tear down the structure?

Staff (A): Yes.

DAB (Q): You mentioned General Office is planned for the future already?

Staff (A): General Office is a less intense land use and proposes fewer conditions than Limited Commercial.

Public (Q): how much will the value of the houses change due to re-zoning near residential? Right now, the area is residential, but when it is re-zoned - how will this impact the value of the houses?

Staff (A): Typically, staff do not comment on land value, but on land use. Staff doesn't have this answer at this time.

The chair opened the floor to the Applicant.

Public (C): Kurt Miller, K.E. Miller Engineering (Agent)

The applicant owns a business on the Southside, there is a parcel that he does not own that backs up to the site. In the future, the applicant may or may not expand further to Dodge St. To avoid a future zone change, the applicant may expand the property. The applicant is fine moving to General Office for parking instead of Limited Commercial. This zoning is desired for expanding West. With this, the applicant would not need to come back and re-zone later.

Public (C) - Mike Baker, nearby business owner

The business owner at 529 South Seneca - has owned the building for several years, and it is a nice family addition. The resident claims that the applicant does not want to build an office but wants a commercial building. There he can move his grocery store. On the South side - they want to add a parking lot. This will deny the owner access to his property. He is concerned about an emergency. Last 10 years, he paid the adjacent owner to access his lot. The resident has experienced damage from graffiti and other structures. He wants to degrade the value because he wants to sell it for cheap. Mr. Baker spoke with someone today - the applicant wants to build a commercial building (not office) all the way to the South side and impact adjacent property values. This is a disaster for them. The "guy" leased a restaurant and another location from the speaker. There was damage done. This "guy" does everything possible to degrade the building and sell at the price he wants. Mr. Baker showed DAB Members photos from his phone. This is the only access road he has. He is opposed.

The chair thanked the guest for his comments and opened the floor to the DAB.

DAB (Q): which is your business? *Referencing site photo.

Public (A): Mr. Baker pointed out his location.

Staff (A): The individual owns the building to the East of the area in question. The only way to get the rear of his building is through the adjacent site.

DAB (Q): There is tension between him and his neighbor. What has been the result of the police reports filed?

Public (A): The person responsible denied the issue.

DAB (Q): Have the police investigated your reports?

Public (A): Not really. There is no response to this issue. He has had access for about 50 years - people come over from the back. Now, his tenant can't access the property. He is not building offices.

Chair thanked the man for his comments.

DAB (Q): Is there a re-zoning for parking only?

Staff (A): There is a land use called ancillary parking - this starts a B – Multi-Family, which is what the area is zoned now. Due to the potential commercial development, the applicant is requesting commercial zoning.

DAB (Q): If the zone change is denied, he can still build a parking lot? What if this was re-zoned for ancillary parking only?

Staff (A): This can't be done as a zone change alone.

DAB (C): The applicant could build a parking lot right now?

Staff (A): Yes - it is zoned as residential, and he could have a parking lot on there now. He is requesting Limited commercial to extend the building.

DAB Member Glasscock asked if there was anything the applicant/agent wanted to address.

Agent (A): No.

DAB (C): General Office would still allow development, right?

Staff (A): General Office is like a "soft" commercial that includes retail general, retail office. Uses in limited commercial that are NOT in general office include: vehicle equipment sales like a car lot. If it was zoned limited commercial - it could be a car lot, but the applicant would need to apply for a conditional use.

DAB (C): If he wanted to do a parking lot right now.

DAB (Q): any other comments from the board?

Public (C): Vincent, Delano

Guarantee him - if there's a fire in the building, the fire department will do what they need to do. No sidewalk on Dodge Street - if you are putting a parking lot on street-side, why wouldn't the developer put a sidewalk on the street? He thinks it is a missed opportunity.

DAB (C): serves on the Southwest NA and is confident that the neighbors will not support. There might be no complaints so far, but she is quite confident they would not approve of this. If the applicant wants a parking lot - he can build it.

Chairman asked for additional questions.

A motion made by DAB Member **Whitmer** to DENY the request for any rezoning and seconded by DAB Member **Johnson**. Motion approved 8-0-0.

Action Taken: Based upon the information available, DAB made a motion to **DENY** the request for any rezoning.

Respectfully submitted,

Brooke Kauchak, District 4 Community Services Representative

ORDINANCE NO. 52-260

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2023-00043

City zone change from B Multi-Family District to GO General Office on property described as:

Lot 6, John F. Thomas Addition to Wichita, Sedgwick County, Kansas.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ATTEST:

Brandon J. Whipple, Mayor, City of Wichita

Jamie Buster, City Clerk

(SEAL)

Approved as to form: _____
Jennifer Magaña, City Attorney and Director of Law

CMB'S FOR September 12, 2023

Renew

Christopher Steindler

2023

Farmer Market***

Consumption Off Premises

2901 N Broadway

** General/Restaurant (need 50% or more gross revenue from sale of food)

*** Retailer (Grocery stores, convenience stores, etc.)

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL SEPTEMBER 12, 2023**

- a. Water Distribution System to serve Willow Creek East 3rd Addition Ph 3 (south of Harry Street, east of Greenwich Rd) (448-90950/E9142/47119619) Traffic to be maintained during construction using flagpersons and barricades. (District II) - \$127,000.00
- b. Sanitary Sewer Improvements to serve Willow Creek East 3rd Addition Ph 3 (south of Harry Street, east of Greenwich Rd) (468-85403/E9141/47267619) Traffic to be maintained during construction using flagpersons and barricades. (District II) - \$133,100.00
- c. SWS #787 Pump Station 7-9 & 12 Repairs (Citywide) (458-2023-085549/U3005/56200723) Traffic to be maintained during construction using flagpersons and barricades. (District I,II,V) - \$203,400.00

To be Bid: August 4, 2023

PRELIMINARY ESTIMATE of the cost of:

Water Distribution System to serve Willow Creek East 3rd Addition Ph 3
(south of Harry Street, east of Greenwich Rd)

All work done and all materials furnished to be in accordance with plans and specifications
on file in the office of the City Engineer.

LUMP SUM BID ITEMS - E9142 - GROUP 1

1	Maintain Existing BMPs	1	LS
2	Site Clearing	1	LS
3	Site Restoration	1	LS
4	Seeding	1	LS

MEASURED QUANTITY BID ITEMS - E9142 - GROUP 1

5	Pipe, WL 8"	1,767	lf
6	Pipe, WL 8" DICL	25	lf
7	Fire Hydrant Assembly	4	ea
8	Valve Assembly, 8"	2	ea
9	Valve Assembly, Anchored 8"	1	ea

Construction Subtotal _____

Design Fee
Engineering & Inspection
Administration
Publication
Water Dept

Total Estimated Cost _____

\$127,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.



Paul Gunzelman, P.E., Interim City Engineer

Sworn to and subscribed before me this _____
(DATE)

City Clerk

47119619 E9142 448-90950

Page _____

EXHIBIT

To be Bid: August 4, 2023

PRELIMINARY ESTIMATE of the cost of:

Sanitary Sewer Improvements to serve Willow Creek East 3rd Addition Ph 3
(south of Harry Street, east of Greenwich Rd)

All work done and all materials furnished to be in accordance with plans and specifications
on file in the office of the City Engineer.

LUMP SUM BID ITEMS - E9141 - GROUP 2

1	Seeding	1	LS
2	Site Clearing	1	LS
3	Site Restoration	1	LS
4	Grading, Easement	1	LS
5	Maintain Existing BMP's	1	LS

MEASURED QUANTITY BID ITEMS - E9141 - GROUP 2

6	Pipe, SS 8"	1,130	lf
7	Pipe Stub, 4"	1	ea
8	Riser Assembly 4", Vertical	13	ea
9	MH, Standard SS (4')	7	ea
10	Air Testing, SS Pipe	1,130	lf
11	BMP, Construction Entrance	1	ea

Construction Subtotal _____


Design Fee
Engineering & Inspection
Administration
Publication
Water Dept

Total Estimated Cost _____

\$133,100.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.



Paul Gunzelman, P.E., Interim City Engineer

Sworn to and subscribed before me this _____
(DATE)

City Clerk

47267619 E9141 468-85403

Page _____

EXHIBIT _____

PRELIMINARY ESTIMATE of the cost of:
SWS #787 Pump Station 7-9 & 12 Repairs
 (Citywide)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

LUMP SUM BID ITEMS

1 Mobilization 1 LS

LUMP SUM BID ITEMS - Pump Station #7

2 Install New Entry Doors and Locks 1 LS

3 Install Generator Unit Automatic Transfer Switch -
 Zenith Controls ZBTS or Approved Equivalent 1 LS

LUMP SUM BID ITEMS - Pump Station #8

4 Install New Entry Doors and Locks 1 LS

LUMP SUM BID ITEMS - Pump Station #9

5 Install New Entry Doors and Locks 1 LS

6 Install Generator Unit Automatic Transfer Switch -
 Zenith Controls ZBTS or Approved Equivalent 1 LS

LUMP SUM BID ITEMS - Pump Station #12

7 Install LED Lighting and Timer 1 LS

8 Install New Actuator Motor for 30x60 Intake Louver
 Ruskin ELF375 or Approved Equivalent 1 LS

9 Install Heating System and Thermostat- Markel 5100
 or Approved Equivalent 1 LS

10 Install Exhaust Fan - Loren Cook Wall Fan 4700 CFM
 or Approved Equivalent 1 LS

Construction Subtotal

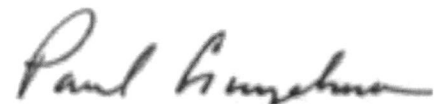
Design Fee
 Engineering & Inspection
 Administration
 Publication

Total Estimated Cost

\$203,400.00

CITY OF WICHITA)
 STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.



Paul Gunzelman, P.E., Interim City Engineer

Sworn to and subscribed before me this _____
 (DATE)

 City Clerk

56200723 U3005 458-2023-085549

Page _____

EXHIBIT

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Funding, Agreements and Change Order Limit Adjustment for West Street, Harry to Pawnee (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the revised budget, agreements and the change order limit adjustment and adopt the amending resolution.

Background: On April 17, 2018, the City Council approved funding for a design concept to improve West Street between Harry and Pawnee. On February 4, 2020, the City Council approved funding for Supplemental Design Agreement No.1 for traffic modeling. On November 2, 2020, the District Advisory Board (DAB) IV unanimously approved the proposed design concept. On December 15, 2020, the City Council approved Supplemental Design Agreement No. 2 for a portion of the final design and the 2021 budget. On September 7, 2021, the City Council approved the revised budget and Administrative Change Order No. 1. On December 6, 2022, the City Council approved the revised budget and Supplemental Design Agreement No. 3.

Analysis: Proposed improvements to West Street between Harry and Pawnee will maximize intersection efficiency by realigning Pawnee Street, West Street, and Southwest Boulevard intersection connections to prioritize the major traffic movements. The design is complete and ready for construction.

Black Hills Energy (BHE) will be required to relocate a gas main in its private easement that conflicts with proposed roadway expansion and storm water improvements. An agreement has been prepared to authorize BHE to relocate conflicting utilities at the City's expense.

WATCO Companies, L.L.C. doing business as Kansas & Oklahoma Railroad, L.L.C. (WATCO) will be required to replace the at-grade railroad crossing on Pawnee, east of West Street with expansion and realignment of the roadway. A replacement and maintenance agreement with WATCO has been prepared to authorize WATCO to replace the crossing to be paid by the City.

The Kansas Department of Transportation agreement stipulates that the City is allowed to use up to \$12,519,231 of federal funds for construction and engineering costs. The federal funding is allocated through the Wichita Area Metropolitan Planning Organization and matches what is programmed in the Transportation Improvement Program.

Due to the size and complexity of the project, staff recommends an increase in the change order limit to 3% of the bid amount, which is estimated to be \$532,020. Without increasing the change order limit, all change orders above the \$50,000 limit established by ordinance will require approval by the City Council regardless of cost. The approximate six-week process for change order approval will result in significant delays with increased costs. Increasing the staff authority level for change order approval will not increase the project budget.

Financial Consideration: The existing project budget is \$6,521,560, of which \$6,396,560 is Local Sales Tax (LST) funding and \$125,000 is General Obligation funding for art, which was approved by the City Council on December 6, 2022.

The agreements with BHE and WATCO are \$686,866 and \$1,812,309 respectively.

The Adopted 2024-2033 Capital Improvement Program includes an additional \$3,165,927 from the Local Sales Tax fund for construction, bringing the local share of the project to \$9,562,487. In addition, \$12,519,231 in federal funding has been allocated to this project in the Transportation Improvement Plan. Staff recommends initiating \$15,685,158, bringing the total project budget to \$22,206,718.

Legal Consideration: The Law Department has reviewed and approved the agreements, change order modification resolution, and amending resolution as to form.

Recommendation/Actions: It is recommended that the City Council approve the revised budget, agreements and the change order limit adjustment and the amending resolution.

Attachment: Agreements, change order modification resolution and amending resolution.

GAS DISTRIBUTION SYSTEM FACILITIES RELOCATION AGREEMENT

This Gas Distribution System Relocation Agreement (“Agreement”) is made and entered into effective this 1st day of July, 2023 (“Execution Date”) by and between the City of Wichita, Kansas (hereinafter referred to as “Municipality”), and Black Hills/Kansa Gas Utility Company, LLC, d/b/a Black Hills Energy (hereinafter referred to as “Black Hills Energy”).

RECITALS

WHEREAS, the Municipality plans to undertake a construction project to make significant improvements to the Municipality (“Municipality’s Project”).

WHEREAS, Black Hills Energy owns and operates a gas distribution system and related facilities (collectively, “Facilities”), and

WHEREAS, Black Hills Energy is willing to rehabilitate or relocate (“Adjust” or “Adjustment”) its Facilities where necessary and the course/method of Adjustment is at the sole discretion of Black Hills Energy; and

WHEREAS, subject to the provisions of Sections 8 and 9 below, the Municipality is willing to reimburse Black Hills Energy for 100% of actual cost and expenses (collectively, “Costs”) incurred in connection with the Adjustment of any Black Hills Energy Facilities presently located outside of the existing public right-of-way and on or under private property and when said Adjustment is made necessary by Municipality’s Project (“Reimbursement”); and

WHEREAS, such Adjustment is shown in Black Hills Energy’s plans, sketches, estimate of cost, and specifications, which are attached to this Agreement and made a part hereof; and

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND OTHER VALUABLE CONSIDERATION HEREIN ACKNOWLEDGED, MUNICIPALITY AND BLACK HILLS ENERGY AGREE AS FOLLOWS:

Section 1. **Black Hills Energy Facilities Adjustment Plans.** Black Hills Energy has prepared and will provide to the Municipality maps or other plans showing the general location of Black Hills Energy's Facilities affected by the Municipality's Project ("Existing Pipeline Map"), incorporated into this Agreement as Exhibit A. The Existing Pipeline Map generally identifies the Black Hills Energy Facilities that the Municipality's Project causes Black Hills Energy to Adjust within or near the Project, as well as preliminary Adjustment locations and routes. Black Hills Energy shall also include a tentative work schedule and construction phasing plan.

Section 2. **Adjustment Tools, Labor, Equipment, and Materials.** Black Hills Energy hereby agrees to furnish, or cause to be furnished, all of the tools, labor, equipment and materials necessary for the Adjustment of its Facilities as made necessary by construction.

Section 3. **Black Hills Energy's Costs to Relocate or Rehabilitate.** Black Hills Energy estimates that the cost of the Facilities Adjustment is approximately \$686,866.33 dollars ("Initial Cost Estimate") (Note: This Initial Cost Estimate is based on pre-construction plans, could vary by at least + 30% and does not include loadings/overhead). A variety of changes to the work or conditions surrounding the work, including but not limited to the following could cause significant changes to this Initial Cost Estimate: Any changes to the Municipality's Preliminary Project Construction Plans, materials and/or labor cost escalation, differing soil conditions, foreign utility lines and/or crossings, scope changes, environmental/permitting/regulatory impacts, schedule impacts, etc. This Initial Cost Estimate will be periodically revised as the Project proceeds and reconciled to the actual Costs, including actual loadings/overhead incurred by Black Hills Energy, which will be provided to Municipality as the basis for Reimbursement.

The Initial Cost Estimate of Black Hills Energy's Facilities Adjustment including further detail on cost categories are provided within Exhibit "B" of this Agreement. However, for abundant caution, as restated from the Recitals above, the Municipality and Black Hills Energy expressly understand and agree that notwithstanding this estimate the Municipality will reimburse Black Hills Energy for 100% of its actual Facilities Adjustment Costs.

Black Hills Energy will invoice Municipality for the actual Costs of the Adjustment in upon completion of the project. The actual invoiced amounts may vary from the estimates set forth on Exhibit B. Assuming satisfactory completion of the portions of the Facilities Adjustment, approval not to be unreasonably withheld, Municipality shall pay such invoice within thirty (30) days of Municipality's receipt of the invoice. If Municipality fails to pay any such invoice within thirty (30) days of receipt, the amount due under the invoice shall accrue interest at the rate of ten (10) percent per annum until paid. If Municipality fails to pay any such invoice within ninety (90) days of receipt, Black Hills Energy may suspend the work until such a time as payment is made. Black Hills Energy agrees that invoices will be prepared and submitted in a manner to allow comparison with the Initial Cost Estimate. Municipality may limit its Reimbursements to 95 percent of the approved Initial Cost Estimate referenced above in this Agreement pending the results of any final cost audit required by the Municipality. The Municipality's agreement herein constitutes a binding agreement between the parties for Reimbursement from the Municipality to Black Hills Energy, which are made necessary by the Municipality's Project.

Section 4. **Additional Adjustment Costs.** If Black Hills Energy uses consultant or engineering services for any part of the Facilities Adjustment, then Black Hills Energy shall notify the Municipality in advance of commencement of such engagement and include with the

notification a statement describing whether the work is to be done by force account, a continuing contract or a new contract. If Black Hills Energy plans to use a Black Hills Energy consultant or engineering firm under an existing written continuing contract, Black Hills Energy shall furnish Municipality with a confidential copy of pertinent parts of the contract. Municipality will inform Black Hills Energy of any reasonable requirements and documentation needed for the consultant or engineering costs to be eligible for Reimbursement.

Section 5. **Preliminary Facilities Adjustment Major Milestone Schedule.** Black Hills Energy provides Municipality a preliminary schedule with critical milestones (“Adjustment Milestone Schedule”) as estimated on Exhibit C. However, any delay in the Municipality’s completion of the Project will result in a day-for-day slip in the Adjustment work. Significant delays in the Municipality’s milestones may jeopardize or prevent the Adjustment work from being completed as estimated. Currently, Black Hills Energy expects Facilities Adjustment work to be completed by January 1, 2024.

Section 6. **Adjustment From Private Easements.** The Parties understand and agree that the above-referenced provisions may not apply to the costs to be reimbursed to Black Hills Energy by the Municipality when Black Hills Energy is required to Adjust its Facilities presently existing in private easements. For those Facilities located within private easements, the Municipality will fully reimburse Black Hills Energy for the costs to Adjust Black Hills Energy’s Facilities.

Section 7. **Commencement and Completion of Adjustment.** Black Hills Energy will perform the Adjustment, as described within this agreement. Black Hills Energy will endeavor to commence the Adjustment of its Facilities within the time periods communicated by the Municipality. However, the start date is subject to delay due to Black Hills Energy’s inability to

procure labor, equipment, easements, materials, environmental constraints, permits/authorizations, or other items necessary for Black Hills Energy to perform the Adjustment of its Facilities or the Municipality's delay of the Municipality Project.

In addition, once the Facilities Adjustment work has commenced, Black Hills Energy will continue with that work, and will attempt to complete the Facilities Adjustment within a reasonable time period, subject to applicable laws, rules and regulations of governmental authorities, and subject to any delay occasioned by lack of right-of-way, availability of materials, labor, equipment, permits or supplies, force majeure or events or conditions of whatsoever nature reasonably beyond Black Hills Energy's control, and further conditioned upon the receipt of all required approvals and consents in form and substance acceptable to Black Hills Energy. Black Hills Energy shall not be obligated to commence the Facilities Adjustment unless and until, at no cost to Black Hills Energy, all necessary private easements, public rights-of-way, and construction or other permits have been executed, acknowledged and delivered to Black Hills Energy in a form acceptable to Black Hills Energy.

Section 8. **Title and Ownership.** Title to and ownership of Facilities which are the subject of the Adjustment shall forever be and remain exclusively and unconditionally vested in Black Hills Energy. Municipality understands, acknowledges and agrees that Municipality shall have no title to, interest in, or ownership of those Facilities.

Section 9. **Property Rights.** The provisions of this Agreement pertaining to property rights, right-of-way occupancy permission, access for servicing when applicable, and use of private easements or rights-of-way shall continue in full force and effect from the date of this Agreement, and shall be perpetually binding upon each party, and its representatives, successors and assigns.

Section 10. **New Easement and Licenses.** Where applicable hereunder by reason of new or relocated utility occupancy of Municipality's property, Municipality hereby grants to Black Hills Energy an easement or license to install and operate Facilities on or across Municipality's property as shown on the approved plans or sketch maps attached hereto and made a part hereof. Prior to Black Hills Energy beginning the Adjustment, Municipality will, at no cost to Black Hills Energy, furnish Black Hills Energy with all necessary easements, rights-of-way and permits. Those easements, rights-of-way and permits shall release Black Hills Energy from any and all claims for damage done to streets, land, fences, and crops arising out of the performance of the Adjustment.

Section 11. **Future Facilities Adjustment.** If future construction, reconstruction, expansion, relocation, rehabilitation, betterment, maintenance, or other rehabilitation or relocation of the Facilities owned and operated by Black Hills Energy in the area occupied by the Municipality's Project becomes necessary, then the Municipality shall pay to Black Hills Energy the actual cost of the future Adjustment of its impacted Facilities before the future Adjustment of Black Hills Energy Facilities is undertaken.

Section 12. **Emergencies.** In a case of emergency, and where immediate action is necessary for the protection of the public and to minimize damage to or loss of investment in the property of Municipality or of Black Hills Energy, Black Hills Energy may make any necessary emergency repairs to its Facilities located in or near the Municipality's Project.

Section 13. **Applicable Law.** This Agreement shall be governed in accordance with the laws of the State of Kansas, the rules and regulations of the Kansa Corporation Commission, and the Tariff of Black Hills Energy.

Section 14. **Force Majeure.** The term "force majeure" as employed herein shall mean acts and events not within the control of the party claiming suspension and shall include acts of God

pandemics, strikes, lockouts, material or equipment or labor shortages, wars, riots, insurrections, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, interruptions by government or court orders, present or future orders of any regulatory body having proper jurisdiction, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells or pipelines, and any other cause, whether the kind herein enumerated or otherwise, not within control of the party claiming suspension and which, by the exercise of due diligence, such party is unable to overcome.

Section 15. **Indemnification.** Each Party shall indemnify, defend and hold harmless the other, its officers, employees, principals (partners, shareholders or holders of an ownership interest) and agents, from and against any third party claims, damages or causes of action (including reasonable attorney's fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property arising from the negligence or willful misconduct of the indemnifying Party, its personnel or agents during the Term of this Agreement. The Party seeking indemnification must promptly notify the other in writing of a claim and provide reasonable cooperation (at the indemnifying Party's reasonable expense) and full authority to defend or settle the claim. The indemnifying Party shall have no obligation to indemnify for any settlement made without its prior written consent.

Section 16. **Confidentiality.** The parties understand that this Agreement is subject to approval by the City of Wichita, Kansas. The terms of this Agreement shall be kept confidential by Black Hills Energy and Municipality except to the extent that this Agreement must be disclosed pursuant to applicable law, rule or regulation. If Black Hills Energy, in its sole discretion and through either direct or circumstantial evidence, determines that the confidentiality provision of this Agreement has been breached by Municipality, then, in addition to any other remedy it may have, Black Hills Energy may immediately terminate this Agreement. Upon such termination, Black Hills Energy shall have no further obligation to Municipality hereunder and Municipality shall immediately pay to Black Hills Energy all amounts due Black Hills Energy hereunder.

Section 17. **Non-Waiver; Duty to Mitigate; No Third-Party Beneficiaries.** No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver shall be in writing signed by the waiving Party. Each Party agrees that it has a duty to mitigate damages. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns, and no other Party shall be a direct or indirect legal beneficiary of or have any direct or indirect cause of action or claim in connection with, this Agreement.

Section 18. **Severability.** If any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall be construed as if such invalid or unenforceable provision had never been a part of this Agreement.

Section 19. **Severability.** If any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall be construed as if such invalid or unenforceable provision had never been a part of this Agreement.

Section 20. **Build America, Buy America Act (the “Act”).** The Parties agree to comply with the Act to buy American steel and iron, if readily available, as set forth below.

Section 20.1 **Overview.** The Parties agree that all steel and iron permanently incorporated into Black Hills Energy’s Adjustment work should be manufactured or produced, including the application of coatings, in the United States, as required under the Act.

Section 20.2 **Process and Documentation Requirements.** The requirements of this section do not include (a) products for which the Act waivers have been granted or other applicable provisions or (b) materials excluded from the Act requirements, including but not limited to, the following: Assembly materials, attachment materials, miscellaneous electronics and hardware,

encasements, fittings, associated materials required for maintenance, materials associated with temporary utility relocation, materials necessary to repair equipment that was discovered or damaged during construction and requires immediate action to restore to safe condition or to minimize adverse public impact, and existing utility materials that are relocated from one location to another within project limits.

In addition, the following definitions of materials that are not subject to the Act apply to utilities:

- Assembly Materials (miscellaneous steel) – The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including but not limited to nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.
- Attachment Materials – An item or material that is not an integral part or permanently attached to the pole, pipe, or valve. Cross arms are an exception to this rule and do not qualify as attachment materials. Attachment materials include but are not limited to, cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75 inch diameter or less.
- Conductor – A material (specifically wires and cables) that allows the flow of energy including electricity, heat, data, audio/video transmissions, etc.
- Encasements – Include cabinets, housings, boxes, vaults, covers, shelves, and other items used to protect or house equipment or miscellaneous electronics.

- Fittings – Individual parts used to join, adjust or adapt a system of pipes including but not limited to, elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs, or taps.
- Maintenance – An action or application of materials necessary to keep a system functioning safely and at optimal capacity; general up-keep.
- Miscellaneous Electronics – Manufactured products or assemblies consisting of many components such as electronic equipment, routers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.
- Miscellaneous Hardware – An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including but not limited to, transformers, locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors, and pumps.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives on the date stated above.

COMPANY

**BLACK HILLS KANSAS GAS
UTILITY COMPANY, LLC.
D/B/A BLACK HILLS ENERGY**



By: Marc Eyre August 2nd, 2023
Title: Vice President—Black Hills Energy
Natural Gas Utilities

MUNICIPALITY


**CITY OF WICHITA, KANSAS, a
Kansas municipal corporation**

By:
Brandon Whipple, Mayor

Attest:

Jamie Buster, City Clerk

Approved as to form:



Jennifer Magaña, City Attorney and
Director of Law

Exhibit List:

Exhibit A: Black Hills Energy's Existing Pipeline Map
Exhibit B: Black Hills Energy's Initial Cost Estimate
Exhibit C: Adjustment Milestone Schedule

The route map with designations is provided below.



EXHIBIT B
BLACK HILLS ENERGY'S INITIAL COST ESTIMATE

TOTAL COST ESTIMATE - \$686,866.33

Estimate for: installation of 4" HDPE line parallel to our existing 14" steel line running between Harry and Pawnee, upgrading the two regulator stations that will feed the new line, tying in services and mains to the new line, removing above ground pressure reducing regulator stations and barricades, and adding a 2" HDPE line for system pressure integrity.

Design	0000182763	001	Status	PLAN
Description	BLACK HILLS ENERGY - WEST ST HARRY TO PAWNEE 4" INST, WICHITA, KS			

Export

<input checked="" type="checkbox"/>	<input type="checkbox"/>		DCE	Description	Estimated Cost
	<input type="checkbox"/>	<input checked="" type="radio"/>	L01	1001-LBR STRAIGHT TIME NON-UN	\$ 14,423.76
	<input type="checkbox"/>	<input checked="" type="radio"/>	M00	1100 MATERIAL STORES INVENTORY	\$ 76,953.30
	<input type="checkbox"/>	<input checked="" type="radio"/>	M01	1101 MAT PURCH NON STOCK	\$ 75,803.00
	<input type="checkbox"/>	<input checked="" type="radio"/>	O15	1815-CONSTR FEE/CNTRACTR PYMTS	\$ 231,924.77
	<input type="checkbox"/>	<input checked="" type="radio"/>	O21	1821-CONTR PAYMENTS - LABOR	\$ 287,761.50

Total Cost	\$ 686,866.33
Net Cost	\$ 686,866.33

EXHIBIT C

ADJUSTMENT MILESTONE SCHEDULE

Municipality Milestones	Duration	Start Date
Municipality Agreement Execution		7/24/2023
Municipality Final Project Plans		7/21/2023
Planning		
Planning Route Finalization	5 days	7/26/2023
Execution		
Walk through	1 day	7/31/2023
Install 2" Anna Integrity Loop (1500')	9 days	8/1/2023
Upgrade DRSs (N & S)	10 days	8/14/2023
Install 4" PE from Harry to Pawnee & tie-overs	90 days	8/28/2023
Abandon service taps on 14" steel	5 days	11/13/2023

As set forth below, the Milestones include:

- 1) An Execution Date of this agreement no later than July 1, 2023.
- 2) Final Project Construction Plans from Municipality no later than July 21, 2023.
- 3) Material availability and lead times are subject to change at the time materials are ordered. Due to the pandemic and other current events affecting domestic and global supply change, lead times could increase significantly over the next several months and into 2024.

PROJECT NO. N-0720-01
STP-N072(001)
FIVE-LANE ROADWAY
CITY OF WICHITA, KANSAS

S U P P L E M E N T A L A G R E E M E N T N o . 1

This Supplemental Agreement, effective the date signed by the Secretary or the Secretary's designee, is by and between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Wichita, Kansas** ("City"), collectively, the "Parties."

RECITALS:

- A. The Parties entered into an Agreement dated October 8, 2021, for a five-lane roadway (the "Original Agreement").
- B. The Parties mutually desire to supplement the Original Agreement to reflect an increase in the maximum funding to reflect the most recent WAMPO TIP #R-19-16.

NOW, THEREFORE, the Parties agree as follows:

1. On page 4 of the Original Agreement, Article II, paragraph 1, be replaced in its entirety to read as follows:

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include all Construction Contingency Items. The Parties agree the costs and contributions reflected below are estimates to be used for encumbrance purposes and are subject to change.

Party	Responsibility	Total Projected Contribution (\$)
Secretary	80% of Total Actual Costs of Construction Engineering (CE) and Construction work phases using a combination of State and Federal funding using: MPO-STBG Funds up to \$8,536,306.00. 80% of Total Actual Costs of Construction work phase using a combination of State and Federal funding using: KDOT-STBG Funds up to \$3,089,097.00; MPO-TA Funds up to \$377,296.00; MPO-TA-STBG Funds up to \$516,532.00.	12,519,231.00
City	20% of Total Actual Costs of CE and Construction until Secretary's funding limit maximum of \$12,519,231.00 is reached.	

	100% of Total Actual Costs of CE and Construction after Secretary's funding limit maximum of \$12,519,231.00 is reached. 100% of Total Actual Costs of Preliminary Engineering (PE), of Right of Way, and Utility Adjustments. 100% Non-Participating Costs	
Total Estimated Project Costs		18,527,173.00

2. **Counterparts.** This Supplemental Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one in the same Agreement.

THIS SUPPLEMENTAL AGREEMENT shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, which is incorporated into this Supplemental Agreement by reference, except as herein specifically provided.

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF, the Parties have caused this Supplemental Agreement to be signed
by their duly authorized officers.

ATTEST:

THE CITY OF WICHITA, KANSAS

CITY CLERK

(Date)

Brandon Whipple, Mayor

(SEAL)

APPROVED AS TO FORM:



City Attorney and Director of Law

Kansas Department of Transportation
Secretary of Transportation

By: _____
Greg Schieber, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

WATCO COMPANIES, L.L.C. D/B/A
KANSAS & OKLAHOMA RAILROAD,
L.L.C.

DATE:

CITY OF WICHITA, KANSAS

PAWNEE STREET
AT-GRADE CROSSING IMPROVEMENTS
CONSTRUCTION AND MAINTENANCE
AGREEMENT

FILE NO.: WRE-2022-725

MP: 489

DOT #: 445178E

THIS PAWNEE STREET AT-GRADE IMPROVEMENT CONSTRUCTION AND MAINTENANCE AGREEMENT (hereinafter "Agreement") is made and entered into on the last date executed below, by and between WATCO COMPANIES, L.L.C. D/B/A KANSAS & OKLAHOMA RAILROAD, L.L.C. (KO), a limited liability company of the State of Kansas (hereinafter "Railroad"), and the CITY OF WICHITA, KANSAS, a municipal corporation of the State of Kansas (hereinafter "City"). City and Railroad also shall be collectively referred to hereinafter as "Parties" and individually each as a "Party"; and

WHEREAS City proposes to construct the improvements of Pawnee Street at the Kansas & Oklahoma, L.L.C. rail line at Crossing No. 445178E (Milepost (MP) 489), identified for preliminary engineering as Project Pawnee Street and in connection therewith proposes to construct an improved at-grade crossing and appurtenant work across Railroad's right-of-way, tracks and other facilities (collectively hereinafter "Crossing") near Railroad MP 489 (hereinafter "Premises"), located substantially upon drawing marked EXHIBIT A, in accordance with plans and specifications prepared by City (collectively hereinafter "Proposed Work"); and

WHEREAS, the "Proposed Work" as used in this Agreement refers to all construction affecting Railroad in the Proposed Pawnee Street Project which includes the construction of the proposed improved at-grade crossing, approaches, and the drainage facilities, and applicable changes in communication, signal and electric lines, and any and all other work of any kind or

character necessary to accomplish the construction of the at-grade crossing, approaches, and the drainage facilities; and

WHEREAS, the parties desire to set forth in this Agreement their understanding and agreements relating to the construction, maintenance, and allocation of costs of said Proposed Work and the changes made necessary in connection therewith.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

In consideration of covenants and conditions to be fulfilled by City as hereinafter set forth,
RAILROAD AGREES:

1. Insofar as it legally may, to give and to grant and hereby does give or grant to City, its agents and contractors, the right to construct on Railroad's right-of-way the Proposed Work as shown on drawing Sheet No. 25 dated 8/15/23 and marked EXHIBIT B, attached hereto and made a part hereof to construct the at-grade crossing, approaches, and drainage facilities, and to use and maintain an at-grade crossing across the Railroad's right-of-way at the Premises.

2. To furnish or cause to be furnished all labor, materials, tools, and equipment and to perform all work required to make changes in its alignment, location, or elevation of telephone, pipe, and signal lines over and/or under its right-of-way, property, track, and other facilities as may become necessary by reason of the construction of said Proposed Work, and to comply with the provisions of Federal-Aid Policy Guide Title 23 of the Code of Federal Regulations (C.F.R.) Part 140I and 23 C.F.R. Part 646B except for such deviations as are approved by the City in writing.

3. To perform all work required to be done by Railroad under this Agreement on a force account basis, or by contract, subject to the provisions of Federal-Aid Policy Guide 23 C.F.R.

Part 140I except for such deviations as are approved by City in writing, the cost thereof to be paid to Railroad by City in the manner hereinafter set forth.

4. To furnish a detailed and itemized estimate of the cost of the work to be performed by the Railroad to facilitate the Proposed Work (hereinafter "Force Account Estimate"), which shall be incorporated herein and made a part hereof, whether or not attached, and designated as EXHIBIT C. The Force Account Estimate shall be for all cost incurred by Railroad, which includes, but is not limited to, construction engineering/monitoring, signal and electrical changes, track work, and railroad protective services.

5. To provide bank account information sufficient for City to pay invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices via ACH, if applicable, Railroad shall execute City's standard ACH – EFT Authorization Form (hereinafter "ACH Authorization Form").

6. To present, insofar as possible, final billing within one hundred twenty (120) days after completion of work performed by Railroad at expense of City on the basis of detailed and itemized statement of cost for items set forth in the said Force Account Estimate and in accordance with and subject to the terms and provisions of the Federal-Aid Policy Guide, 23 C.F.R. Part 140I, Railroad may present monthly progress bills to City for incurred cost of the Force Account Estimate work as completed; and the final payment will be made in the amount of the difference between the sum of the monthly payments made and the itemized audited statements for the total amount of the work performed by Railroad upon completion of the work. In the event of overpayment, Railroad shall refund to City such excess.

ARTICLE II

In consideration of the covenants and conditions to be fulfilled by Railroad as herein set forth, CITY AGREES:

1. To prepare design plans and specifications, including special provisions, for said Proposed Work, and all work incidental thereto. Said plans, specifications and special provisions are to be approved by the Railroad prior to the commencement of construction and are hereby made a part of this Agreement by reference, whether or not attached hereto.

2. To acquire all rights-of-way necessary for the construction of the Proposed Work.

3. To make any and all arrangements with Railroad and others that may be necessary for the location of wire lines, pipelines, and other facilities not owned by Railroad.

4. To furnish or cause to be furnished all labor, materials, tools, and equipment and to construct the Proposed Work, except such work as is to be performed by Railroad, in accordance with the approved plans and specifications.

5. City shall be responsible for ensuring compliance with all applicable State, federal, and local environmental laws and regulations (including without limitation, those pertaining to waste, transport, storage, and disposal; stormwater, sedimentation, and erosion control) and ordinances and shall be responsible for any fines, assessments, or other penalties resulting from non-compliance by any entity performing work under contract with City. City will be solely responsible for any permits, licenses, or other documents and compliance therewith required in association with or while performing the Proposed Work. Neither City and its employees, nor anyone acting under or at the direction of City, shall dump, bury, or burn any debris upon the Premises.

6. To require all Proposed Work to be performed in a manner that will not endanger the safety of Railroad or unduly interfere with the operation thereof. If, in the opinion of Railroad, the operation of City's contractor is endangering the safety of Railroad's operation, Railroad may, through the City, order immediate termination of further work on Railroad's Premises, without liability on Railroad's part, until the dangerous condition has been corrected.

7. Prior to any contractor engaged by City in connection with the Proposed Work (each a "Contractor") entering or performing any work within the Proposed Work area related to the construction of the Proposed Work, City shall require that:

A. the contractor(s) for the Proposed Work has executed the Railroad's then-current Right of Entry Agreement.

B. the contractor(s) obtain the then-current insurance required in the Right of Entry Agreement; and the contractor(s) provide the Railroad with such insurance policies, certificates, binders and/or endorsements as required under the Right of Entry Agreement.

C. Execution of the Right of Entry Agreement by the contractor(s) shall be on behalf of itself and its contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; such additional persons or entities will not need to execute and deliver a Right of Entry Agreement or other document to access Premises property covered by the applicable Right of Entry Agreement.

D. The Railroad's Right of Entry Agreement Application is included in **Exhibit D** attached hereto and hereby made a part hereof. City confirms that it will inform the contractor(s) that it is required to execute such form of agreement and obtain the required insurance before commencing any work on the Premises or permitting any other Contractor to commence any work on the Premises. Under no circumstances will any Contractor be allowed on the Premises unless the contractor(s) has first executed the Railroad's Right of Entry Agreement and obtained the insurance set forth therein and also provided to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

E. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Kansas & Oklahoma Railroad, L.L.C.
Real Estate Department
315 W. 3rd Street
Pittsburg, KS 66762
File No. WRE-2022-725

F. For purposes of this Agreement, all references to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

E. If City's own employees will be entering the Premises or otherwise performing any of the Proposed Work on the Premises, City itself must:

- execute the Railroad's then-current Right of Entry Agreement, substantially in the form and with substantially the terms included in **Exhibit D** attached hereto; and

- obtain the insurance, and provide such evidence thereof, as is required in the Agreement, provided that City may self-insure all or a portion of the insurance coverage beyond customary deductibles, subject to the Railroad's prior review and approval, which approval will not be unreasonably withheld.

8. To reimburse Railroad promptly upon receipt of each bill for the cost of the Force Account Estimate work compiled and incurred in accordance with the provisions of this Agreement, subject to the conditions of Article III, Paragraph 2, of this Agreement.

- A. PROVIDED, however, that should some unforeseen condition or combination of conditions create additional work to be performed by Railroad causing increased costs exceeding the total cost as set forth in the original Force Account Estimate, marked **EXHIBIT C**, Railroad shall continue to furnish City for payment partial billings for the cost incurred and furnish City within one hundred twenty (120) days after reaching the total costs set forth in the original Force Account Estimate, a supplemental force account estimate reflecting the increased cost incurred and any additional cost anticipated. An all-inclusive final force account bill may be submitted within the one hundred twenty (120) days period in lieu of a supplemental estimate.
- B. PROVIDED, further that in the event City shall for any reason cancel or terminate its contract and abandon the construction of said Proposed Work or in the event City's contractor shall stop work thereon for a period of sixty (60) calendar days, other than seasonal suspensions authorized by City, for reason over which City or contractor has no control, and City has not prepared to relet or resume work under the contract, Railroad shall have the right after due notice to City to restore its Premises to the condition existing prior to commencement of the Proposed Work, and City agrees to reimburse Railroad for all expenses incurred by Railroad for such restoration by Railroad.

ARTICLE III

CITY AND RAILROAD mutually agree:

1. That all work contemplated in this Agreement shall be mutually scheduled and coordinated, commenced promptly, and completed without undue delay. All work shall be performed in a good and workmanlike manner.

2. It is the intent of this Agreement that Railroad shall be reimbursed for all costs and expenses incurred by Railroad as provided in this Agreement for work performed in accordance with the plans and the Force Account Estimate and any changes therein authorized by City.

3. That no benefit will accrue to Railroad pursuant to the provisions of Title 23 of the U.S. Code (Highways) as amended and Federal-Aid Policy Guide 23 C.F.R. Part 646B due to the Proposed Work, in view of which there will be no Railroad contribution.

4. That after completion of the Proposed Work, City shall, at its own cost and expense, maintain and make all necessary repairs to the surface, structure and substructure of the at-grade crossing, as well as the wearing surface of the crossing, approaches, and drainage facilities of said crossing. City shall be solely responsible for correcting any deterioration, damage, or failure inflicted by acts of God or acts of man, or damage occurring that is a result of inadequate preventative maintenance that results in a condition placing Railroad operations at risk within an expedited timeframe.

5. Railroad and its contractors are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available at their respective office at all reasonable times during the contract period and for one (1) year from the date of final payment for inspection by City, Federal Highway Administration or any authorized representative of the Federal Government and copies thereof shall be furnished if requested.

6. That this Agreement shall be binding upon and inure to the benefit of Railroad, its successors and assigns, and upon and to the benefit of City, its successors and assigns. Also, this Agreement is solely for the benefit of the identified Parties to this Agreement and is not intended to give any rights, claims, or benefits to third parties or any person or to the public at large.

7. That it is specifically understood and agreed that the rights to the use and control of the area or space above said at-grade crossing which exceed reasonable requirements for highway purposes have not been determined and are not affected by execution of this Agreement, both Railroad and City reserve the right to have the use and control of such air rights judicially determined at a future date.

8. Railroad hereby reserves unto itself, the right to continue to maintain, repair, renew, and operate the railroad and facilities and appurtenances over or along the Premises and to construct such additional tracks and other Railroad facilities over or along the Premises within the Railroad's right-of-way and to maintain, repair, renew, and operate the same as in the judgment of the Railroad may be requisite.

9. Should the use of said at-grade crossing be abandoned, then all rights hereby granted to the City shall thereupon cease and terminate, and City will, at its cost and in a manner satisfactory to Railroad, remove the portion of said at-grade crossing located within the limits of said Railroad right-of-way, and restore the Premises to the condition existing prior to the Proposed Work within the limits of said right-of-way.

10. Upon the date of acceptance of said Proposed Work by City, any rights granted by temporary construction easement which may be herein granted shall be extinguished.

11. Prior to final acceptance of said Proposed Work, City and Railroad shall have the right to make a final inspection of the completed Proposed Work to assure that the work has been done in accordance with the plans and specifications approved by City and Railroad. Such acceptance shall be reflected in writing and exchanged by the Parties. Said inspection shall occur

within thirty (30) days of notification in writing or by electronic transmission to City and Railroad by the Party responsible for the Proposed Work that has been completed.

12. Deviations from the approved final design plans will be documented to reflect the constructed field conditions. The Party responsible for construction of the project will be responsible for preparing post-construction drawings. The post-construction drawings are to be delivered to all Parties after final inspection. Deviations that will, or could potentially, impact Railroad property or operations are to be reviewed and approved by all Parties prior to its implementation.

13. Any notice, request, or other communication among the Parties shall be delivered in writing, sent by first-class mail, overnight courier, and/or electronic transmission and shall be deemed given upon actual receipt by the addressee. Notice shall be addressed as follows:

If to Railroad, use:

Kansas & Oklahoma Railroad, L.L.C.
315 W. 3rd Street
Pittsburg, KS 66762
ATTN: Loren Bradford, General Manager
loren.bradford@watco.com

If to City, use:

City of Wichita, Kansas
455 N. Main
Wichita, KS 67202-1600
ATTN: James Wagner
jwagner@wichita.gov

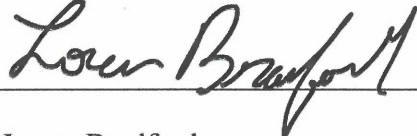
14. To the extent authorized by law, each Party shall be responsible for its respective actions under the terms of this Agreement and the City shall indemnify and save harmless the Railroad for any claims for payment, damages, and/or liabilities arising as a result of such action. Except that indemnification given by the City shall be only in the manner and to the extent allowed by Kansas law.

15. The Parties agree to comply with the Build America, Buy America Act to buy American steel and iron, if readily available.

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IN WITNESS WHEREOF, this PAWNEE STREET AT-GRADE CROSSING IMPROVEMENT CONSTRUCTION AND MAINTENANCE AGREEMENT has been executed, the last day and year set out below, on the part of the City and the Railroad by authority duly given.

WATCO COMPANIES, L.L.C. D/B/A
KANSAS & OKLAHOMA RAILROAD,
L.L.C.

BY: 

NAME: Loren Bradford

TITLE: General Manager

DATE: 8-1-23

MAILING ADDRESS

Kansas & Oklahoma Railroad, L.L.C.

315 W. 3rd Street

Pittsburg, KS 66762

ATTN: Loren Bradford

General Manager

Loren.bradford@watco.com

316-285-4684

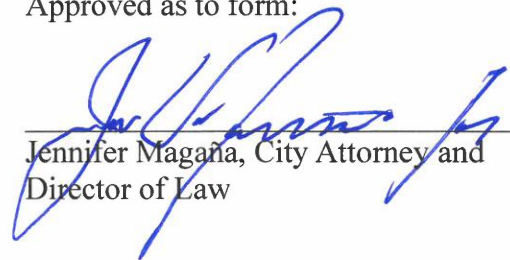
CITY OF WICHITA, KANSAS, a
Kansas municipal corporation

By: _____
Brandon Whipple, Mayor

Attest:

Jamie Buster, City Clerk

Approved as to form:



Jennifer Magaña, City Attorney and
Director of Law

[illegible]

[illegible]

EXHIBIT C

FORCE ACCOUNT ESTIMATE



KO Wichita KS Road Crossing Improvements (VII) - RR - 2.9.2023.xlsxm							Pay Item Not	
Original Pricing Date		2/2/23		Revised Pricing Date		2/9/23		
Description		Quantity	Unit	Unit Price	Total			Notes
Site Work					\$ 904,281.53			Site Work
MISCELLANEOUS					\$ 728,000.00			
1	Signal Equipment & Installation	1	LS	\$728,000.00	\$	728,000.00	1	
BASE COURSE					\$ 3,738.00			
2	Subballast Placement Only	89	Ton	\$10.00	\$	890.00	2	
3	Rail Bed Subballast	89	Ton	\$32.00	\$	2,848.00	3	
CUT TO FILL- BASIC					\$ 14,877.00			
4	Cement Treated Stone Base	261	Ton	\$42.00	\$	10,962.00	4	
5	Undercut rail base	145	CY	\$27.00	\$	3,915.00	5	
ASPHALT PAVEMENT					\$ 16,800.00			
6	Pedestrian Crossing	1	LS	\$16,800.00	\$	16,800.00	6	
DRAINAGE					\$ 37,250.00			
7	6" Non-Perforated Pipe	450	LF	\$38.00	\$	17,100.00	7	
8	6" Perforated Underdrain	310	LF	\$65.00	\$	20,150.00	8	
DEMOLITION					\$ 18,500.00			
9	Remove Existing Crossing Panels	1	LS	\$18,500.00	\$	18,500.00	9	
Addl. Site Work & Site Work-Mobilization					\$ 85,116.53			
10	Site Sub Ballast	100	TN	\$ 32.00	\$	3,200.03	10	
11	Site Work-Mobilization	10%	PCT	\$ 819,165.00	\$	81,916.50	11	
Track Work					\$ 329,358.00			
Turn Outs / Switches					\$ 61,214.00			
12	Material - AREMA Main Line 136RE #10 w/ SM points W/ Solid Mang Self Guarded frog All Rail and OTM - O Right Hand-1 Left Hand W/ Hard Wood SW Pack Ties W/ HSS Switch Stand	1	Ea	\$ 61,214.00	\$	61,214.00	12	
Track					\$ 28,494.00			
13	Material - Rail 136RE 39 FT-Field Welds-New 7x9x8"6" GS Crossties--DS 12inch Tie Plates-Kegs Spikes-Rail Anchors--	100	TF	\$ 249.94	\$	24,994.00	13	
14	- Labor To Construct Track -	100	TF	\$ 35.00	\$	3,500.00	14	
RR Ballast					\$ 7,142.00			
15	Ballast with Loading and Freight	264	NT	\$ 27.05	\$	7,142.00	15	
Road Crossing					\$ 206,133.00			
16	Material-Concrete Panel-136RE Rail-10 Foot Ties Plates Panadrol with E clips Spikes Screw -Anchors-Field weld - W/ Labor Welds-Bonded Insulated Joint-Tons of Ballast--	164	Ea	\$ 843.10	\$	138,268.00	16	
17	Labor-	164	Ea	\$ 413.81	\$	67,865.00	17	
Additional Pay Items Track					\$ 26,375.00			
18	Insulated Joints (plug joints welded in place)	4	EA	\$ 2,000.00	\$	8,000.00	18	
19	Track Removal - to be stored on site	135	TF	\$ 25.00	\$	3,375.00	19	
20	TO Removal - to be stored off site at K&O yard	1	LS	\$ 15,000.00	\$	15,000.00	20	
Direct Construction Costs					\$ 1,233,639.53			
Site Work					\$ 904,281.53			
Track Work					\$ 329,358.00			
Indirect Costs					\$ 344,277.51			
Contingency (Site, Rail & Civil Only)		20%		\$ 1,233,639.53	\$	246,727.91		
Tax - On material only (see exclusion #11)		7.2%		\$ 539,090.91	\$	38,545.00		
Builders Risk Insurance		1.5%		\$ 1,233,640.00	\$	18,504.60		
Railroad Flagging Cost		45.0	Day	\$ 900.00	\$	40,500.00		FRA Protection Required
Engineering & Project Management					\$ 234,391.60			
Design (Engineering)		1	L.S.	\$ 86,354.80	\$	86,354.80		
IL/GL - Project Management		1	L.S.	\$ 148,036.80	\$	148,036.80		
See Exclusions or Special Conditions Below				Totals	\$ 1,812,308.63			
Tax on labor not included		Direct Construction Costs			\$ 1,233,639.53			
		Indirect Costs			\$ 344,277.51			
		Engineering & Project Management			\$ 234,391.60			

EXHIBIT D
Right of Entry Application



Application for Right of Entry (ROE)
or Supplement to Existing Permit No. _____

LICENSEE CONTACT INFORMATION

Full legal name of Licensee:	City of Wichita, Kansas		
Municipal ownership, if any:	City of Wichita		
If not a corporation, name(s) of owners or partners:			
DBA, if applicable:		State of incorporation, if applicable:	
Contact name:	James Wagner	Contact phone:	(316) 268-4505
Business address:	455 N. Main Wichita, KS	Zip+4 (REQUIRED):	67202-1600
Contact email:	jwagner@wichita.gov		

LICENSEE BILLING INFORMATION

☐ Same as Above

Bill-to company:	TranSystems Corporation		
Billing contact name:	Michael Bailey	Contact phone:	(316) 213-3083
Billing mailing address:	245 N. Waco, Suite 222	Zip+4 (REQUIRED):	67202-1131
Billing email address:	mdbailey@transystems.com		

ENTRY LOCATION AND DETAILS

Name of Railroad:	Kansas & Oklahoma Railroad		
Address of location, including county:	Sedgwick		
Railroad milepost (if known):	0489.00		
Nearest US DOT/AAR crossing number:	445178E		
Lat/Long (in decimal form):	37.65130833 N/97.38609167 W		
Distance and direction from centerline of nearest road crossing:	Improvements are located at the Pawnee Street at-grade crossing, 445178E		
Dimensions of affected property, railroad or otherwise: (Include with this application a plan showing exact location relative to any landmarks, structures, roads, mileposts, or track. Details on second page of this application.)	The affected railroad property will include the entire 100' RR ROW from approx. 25' south of the existing roadway south curb line to 112' north of the existing roadway north curb line.		
Detailed description of work to be completed/reason for entry. Incomplete information will cause a delay in application processing.	<small>The general project improvements by the city of Wichita include full reconstruction of the West Street and Pawnee/Southwest Boulevard intersection and widening improvements of West Street from Southwest Boulevard to Harry Street. The improvements include a 5-lane section including curb and gutter, storm sewer, inlets, asphalt and concrete paving, concrete intersection improvements at Pawnee, Southwest Boulevard and West Street intersection, increasing curb return radii on adjacent side streets and concrete pavement and permanent signals at the West Street and Pawnee and Pawnee and Southwest Boulevard intersections. Pawnee will be widened from the West Street intersection to the east approx. 2,250 feet. The proposed improvements will include a new waterline crossing under the tracks on the north side of the proposed Pawnee improvements and RR crossing/signal improvements.</small>		
Are buildings or structures currently located on site? Y/N	N	If yes, describe.	
Requested access dates: (See APPLICATION FEE SCHEDULE for associated fees.)	11/1/2023 - 10/31/2025		

DEPARTMENT OF TRANSPORTATION PROJECT INFORMATION (If applicable)

If this installation is associated with a DOT project, please provide all information below.			
DOT project name:	West Street, Harry to Pawnee		
DOT contract number:		DOT project number:	87 N-0720-01
Project contact name:	Matt Graham	Project contact phone:	(785) 207-5125
Project contact email:	Matthew.Graham@ks.gov		
Contact mailing address:	3200 E. 45th Street N., Wichita, KS	Zip+4 (REQUIRED):	67219-1476

THIRD-PARTY CONTRACTOR INFORMATION

If more than one contractor will be employed, please complete page four (4) of this application. Please provide certificates of insurance meeting the requirements detailed on Exhibit A, attached, for each contractor.

Will a contractor be employed for installation or maintenance?	<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Yes, but contractors not yet identified		
Company name, if known:		Contact name:	
Contact phone:		Contact email:	
Business address:			
Work to be performed:			

APPLICATION FEE SCHEDULE – All fees are subject to change without notice.
Please check all that apply.

Application fee (Non-Refundable)	\$1,250	<input checked="" type="checkbox"/>	Due upon submission of Application for ROE. Minimum 30 days processing and review time.
Minimum License fee, valid up to 60 days:	\$1,000		Due upon submission of Application for ROE. If application is not approved and license not granted, fee will be refunded.
License fee for 90-day term:	\$2,000		Due upon submission of Application for ROE. If application is not approved and license not granted, fee will be refunded.
License fee for 150-day term:	\$4,750		Due upon submission of Application for ROE. If application is not approved and license not granted, fee will be refunded.
Storage Customers - combination application / license fee (Non-Refundable)	\$500		Due upon submission of Application for ROE for storage customers only.
Engineering review fee	\$750	<input checked="" type="checkbox"/>	\$750 fee covers a basic review. If greater review is required, the fee will be adjusted accordingly.
Environmental fee (if applicable)	\$2,250		Due upon submission of Application for ROE if applicable
Expedite fee (Non-Refundable)	\$1,750		Due upon submission if requesting processing and review be expedited. Expect 1 – 2 weeks processing and review time. If extensive engineering review is required, additional time may be necessary.

INCLUDE WITH APPLICATION:

Review Right of Entry Application Checklist to ensure all required information has been provided with application.

PAYMENT BY ACH

Account Name: Watco Companies, L.L.C.
Account #: 1430137371
Routing #: 071000288
SWIFT: HATRUS44
Bank Name: BMO Harris Bank
Bank Address: 111 W Monroe St, Chicago, IL 60603
Email Remittance: ar@watco.com

PAYMENT BY CREDIT CARD – Visa or Mastercard Only

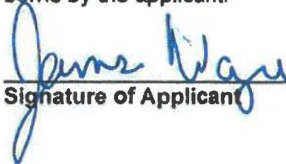
I, cardholder, authorize the card listed below to be billed as specified. Note: If card below has been previously provided and stored for future transactions, only items listed with ** are required for each future payment.			
** Last 4 digits of card number:		Expiration Date (MM/YY):	___/___
Billing Address, City, State, Zip:			
Store complete card information for future transactions: Y/N		**Dollar Amount:	**SCS Invoice Number(s):
**Cardholder Signature:		** Date (MM/DD/YY):	___/___/___

SUBMIT TO:

Name of Railroad:	Kansas & Oklahoma Railroad
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RealEstate@Watco.com

If, in the opinion of the Railroad, sufficient hazard is involved, Railroad will supply flagmen with proper advanced notice; or, if any work or activities require removal, replacement, modification, or locating of track, bridges, signals, railroad wires or pipelines, roads, or the supply of railroad engineering or supervision, the applicant agrees that the full cost of such railroad services will be borne by the applicant.


Signature of Applicant

SPECIAL PROJECTS ENGINEER
Title

10/27/2022
Date

(Published in *The Wichita Eagle*, on September 15, 2023, and September 22, 2023)

RESOLUTION NO. 23-375

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 22-552 OF THE CITY OF WICHITA, KANSAS WHICH AUTHORIZED THE ISSUANCE OF GENERAL OBLIGATION BONDS TO PAY THE COSTS OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, Sedgwick County, Kansas (the “County”) pursuant to the authority of K.S.A. 12-187 *et seq.* (the “Sales Tax Act”), imposes a one percent (1%) retailers' sales tax within the County (the “Sales Tax”); and

WHEREAS, pursuant to the Sales Tax Act, the City is the recipient of funds derived from the Sales Tax and is authorized pursuant to K.S.A. 12-195b to issue general obligation bonds secured by a pledge of the Sales Tax, provided certain procedural requirements contained in the Sales Tax Act are satisfied and the City obtains a comprehensive feasibility study showing that the City’s revenues from the Sales Tax will be sufficient to retire such bonds; and

WHEREAS, pursuant to the Sales Tax Act, the City Council (the “Governing Body”) of the City has heretofore passed Ordinance No. 41-815 (the “Sales Tax Ordinance”) pledging one-half of the City’s receipts from the Sales Tax for the purpose of financing the costs of road, highway and bridge projects in the City and related right-of-way acquisition (the “Eligible Improvements”); and

WHEREAS, the Governing Body is authorized, pursuant to K.S.A. 13-1024c, as amended by Charter Ordinance No. 156 of the City (the “Public Improvements Act”) to issue general obligation bonds of the City without an election for the purpose of paying for the construction, purchase or improvement of any public improvement, including the land necessary therefore, and for the purpose of rebuilding, adding to or extending the same as the necessities of the City may require and for the purpose of paying for certain personal property therefore; and

WHEREAS, the Governing Body, pursuant to Resolutions No. 18-119, No. 20-035, No. 20-401, No. 20-035, No. 21-234, and No. 22-552 of the City (the “Prior Resolutions”) has found and determined that it is necessary and advisable to make certain public improvements described as follows:

West Street, Between Harry and Pawnee as necessary for a major traffic facility (472-85433)

(the “Project”); and

WHEREAS, the Project qualifies as an Eligible Improvement under the Sales Tax Ordinance and a public improvement under the Public Improvements Act and the Governing Body hereby finds it necessary and advisable to expand the authority for financing of the Project and provide for payment of all or a portion of the costs thereof by the issuance of sales tax/general obligation bonds of the City.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS,
AS FOLLOWS:**

Section 1. Amendment. *Section 1* of the Prior Resolution is hereby amended to read as follows:

Section 1. Project Authorization. It is hereby authorized, ordered and directed that the Project be acquired and/or constructed at an estimated cost of **\$12,644,231** in accordance with plans and specifications therefor prepared under the direction of the City Engineer and approved by the Governing Body; said plans and specifications to be placed on file in the office of the City Engineer.

Section 1. Amendment. *Section 1* of the Prior Resolution is hereby amended to read as follows:

Section 2. Sales Tax Authorization. It is hereby determined and declared to be necessary to issue sales tax/general obligation bonds (the "Sales Tax General Obligation Bonds") for the purpose of paying **\$9,562,487** of the costs of the Project and related interest and financing costs. The Sales Tax General Obligation Bonds shall be general obligations of the City and shall be paid and secured by a pledge of a portion of the City's receipts from the Sales Tax as set forth in **Section 3** hereof, and, if not paid, shall be paid from ad valorem taxes which may be levied by the City for such purpose without limit as to rate or amount.

Section 3. Pledge of Sales Tax. The Governing Body hereby pledges fifty percent (50%) of City's revenues from the Sales Tax to the payment of any Sales Tax General Obligation Bonds issued to finance the Project.

Section 4. Public Improvement Act Authorization. As an alternative to the authority provided under the Sales Tax Act and in **Sections 2 - 3** herein, all or a portion of the costs of the Project, interest on financing and administrative and financing costs may be financed with the proceeds of general obligation bonds of the City (the "General Obligation Bonds," and together with the Sales Tax General Obligation Bonds, the "Bonds") issued under the authority of the Public Improvements Act.

Section 5. Publication. This Resolution shall be published once a week for two (2) consecutive weeks in the official newspaper of the City. If within thirty (30) days after the final publication, there shall be filed with the Sedgwick County Election Commissioner, a written petition requesting an election on the issuance of the Sales Tax General Obligation Bonds and the pledge of the Sales Tax, signed by not less than five per cent (5%) of the electors of the City who voted at the last preceding general election of the City, then no such Sales Tax General Obligation Bonds shall be issued or Sales Tax pledged unless such proposition shall be submitted to and approved by a majority of the voters of the City voting at an election held thereon. If no sufficient protest is filed within the period of time hereinbefore stated, then the Governing Body shall be authorized to issue the Sales Tax General Obligation Bonds pursuant to the Sales Tax Act and to pledge the City's portion of the Sales Tax to the payment thereof.

Section 6. Reimbursement. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before **April 17, 2018**, to the extent of Bonds originally authorized under **Resolution No. 18- 119**, and the date which is 60 days before **February 4, 2020**, to the extent of additional Bonds originally authorized under **Resolution No. 20- 035**, and the date which is 60 days before **December 15, 2020**, to the extent of additional Bonds originally authorized under **Resolution No. 20-401**, and the date which is 60 days before **September 7, 2021**, to the extent of additional Bonds originally authorized under **Resolution No. 21-234** and the date which is 60 days before **December 6, 2022**, to the extent of additional Bonds originally authorized under **Resolution No. 22-552** and the date which is 60 days before the date of adoption of this Resolution, to the extent of the increased authorization contained herein, all pursuant to Treasury Regulation § 1.150- 2.

Section 7. Conditional Repeal of Sections 1 and 2 of the Prior Resolutions. In the event no sufficient protest petition is filed in accordance with the Sales Tax Act against the Project and the Bonds as set forth in **Section 5** hereof, the Prior Resolutions are hereby repealed. If a protest petition is filed and a required referendum does not approve the Project and the Bonds, the Prior Resolutions shall remain in full force and effect as last amended, with respect to the Project and the Bonds authorized therein.

Section 8. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

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ADOPTED by the City Council of the City of Wichita, Kansas, on September 12, 2023.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, Director of Law
and City Attorney

Resolution No. 23-376

A RESOLUTION TO MODIFY THE CHANGE ORDER POLICY GOVERNING THE CONSTRUCTION OF A SINGLE PUBLIC WORKS PROJECT AS ALLOWED BY CHARTER ORDINANCE 228:

WHEREAS, the construction of major public works projects routinely entail the need to make contract modifications for field conditions, quantity adjustments, and other alterations necessary for efficient and effective project completion; and

WHEREAS, the use of public bidding followed by use of professional City staff for project oversight protects against cost overruns that do not inure to the benefit of the public; and

WHEREAS, **West Street, Between Harry and Pawnee** project covered by contract number **472-85433** qualifies as such a major public work construction project. Continued, timely prosecution of that work is in the best interest of the public and nearby commercial and residential property owners;

WHEREAS, an increase in the level of change orders allowed without additional Council approval, as authorized in Charter Ordinance 228, will allow responsible project management to continue without costly and inconvenient construction delays;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA ON THIS 12th DAY OF September 2023 that,

1. The City Council for the City of Wichita, Kansas hereby adopts and approves a one-time modification to the change order limit governing the **West Street, between Harry and Pawnee** project covered by contract number **472-85433**. This modification grants City staff authority to approve change orders for the **West Street, between Harry and Pawnee** project up to a cumulative cost not exceeding **three (3%)** of the original contract price without separate City Council approval.
2. This policy is effective only for project change order work that both arises from unforeseen conditions that are discovered after bids are let and that does not expand the scope of work to be performed under the original contract. Work that is not the result of unforeseen conditions or that expands the scope of the contract work is to be separately bid.

ADOPTED AT WICHITA, KANSAS BY THE GOVERNING BODY OF THE CITY OF WICHITA
ON THIS 12th DAY OF September 2023.

BRANDON J. WHIPPLE, MAYOR

ATTEST:

JAMIE BUSTER, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

JENNIFER MAGAÑA, CITY ATTORNEY AND DIRECTOR OF LAW

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Design Agreement for Lionsgate Addition (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the design agreement.

Background: On February 28, 2023, the City Council approved petitions for water, sewer, and paving improvements to serve Lionsgate Addition located south of Pawnee and east of 135th Street West.

Analysis: The proposed design agreement between the City and Garver, LLC (Garver) provides for the design of the improvements. In accordance with Administrative Regulation 1.10, Garver is an engineering consultant upon whom the City and developer mutually agree for this work, and as this firm provided the preliminary engineering services for the platting of the subdivision, can expedite plan preparation.

Financial Considerations: The design fee for the improvements is \$98,061. Funding was approved by the City Council on February 28, 2023, and is 100% funded by special assessment.

Legal Considerations: The Law Department has reviewed and approved the design agreement as to form.

Recommendation/Action: It is recommended that the City Council approve the design agreement and authorize the necessary signatures.

Attachment: Design agreement.

AGREEMENT for PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

GARVER, LLC

for

LIONSGATE ADDITION

THIS AGREEMENT, made this _____ day of _____, 2023, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and GARVER, LLC, party of the second part, hereinafter called the "CONSULTANT".

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM serving Lots 1-7 Block 1; Lots 1-18 Block 2; Lots 1-15 Block 3, Lionsgate Addition (south of Pawnee, east of 135th St. W.) (Project No. 448-2023-004197_E3121-47121623).

SANITARY SEWER serving Lots 1-7 Block 1; Lots 1-18 Block 2; Lots 1-15 Block 3, Lionsgate Addition (south of Pawnee, east of 135th St. W.) (Project No. 468-2023-004198_E3120-47269523).

WHEATLAND, RED ROCK serving Lots 1-7 Block 1; Lots 1-18 Block 2; Lots 1-15 Block 3, Lionsgate Addition (south of Pawnee, east of 135th St. W.) (Project No. 472-2023-085887_E3119-47474023).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The CONSULTANT shall furnish professional services as required for designing improvements in Lionsgate Addition, and to perform the project tasks outlined in the SCOPE OF SERVICES (**Exhibit "A" or "SCOPE OF SERVICES"**).

II. IN ADDITION, THE CONSULTANT AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
- B. To attend meetings with the CITY and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for bodily injuries to persons or third-party tangible property arising from or caused by errors, omissions or negligent acts of CONSULTANT, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Agreement.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by CONSULTANT and, where relevant to method of payment, to make such material available to the CITY.

- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. The CONSULTANT agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the project as stipulated below; EXCEPT that the CONSULTANT shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the CONSULTANT under this Agreement. CONSULTANT further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by CONSULTANT, its agents, employees and subcontractors, under this Agreement, including any additions, alterations or amendments thereof, shall be performed under the following standard of care: reasonable and sound practices ordinarily used by members of CONSULTANT'S profession practicing under similar conditions, at the same time and locality.
- J. The CONSULTANT shall procure and maintain insurance coverage based on Project Construction Cost as follows: Applicable Construction Costs for this Project: \$1,244,000.

Project Construction Cost:		\$0 - \$2,000,000	+\$2,000,000
Insurance Coverages	Description	Amount	Amount
Commercial General Liability	Covering premises – operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate	\$2,000,000 Each Occurrence \$4,000,000 Annual Aggregate
	Bodily Injury Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate	\$2,000,000 Each Occurrence \$4,000,000 Annual Aggregate
	Property Damage Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate	\$2,000,000 Each Occurrence \$4,000,000 Annual Aggregate
	OR Bodily Injury and Property Damage (Combined Single Limit)	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate	\$2,000,000 Each Occurrence \$4,000,000 Annual Aggregate
Comprehensive Automobile Liability All Owned, Non-Owned, and Hired Vehicles	Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 Each \$2,000,000 Annual Aggregate	\$1,000,000 Each \$2,000,000 Annual Aggregate
Workers' Compensation		Statutory	Statutory
Employers Liability		\$1,000,000	\$1,000,000
Professional Liability	Per Occurrence or Per Claim. All Per Claim policies to include a two year reporting period.	\$2,000,000 per occurrence, or claim \$4,000,000 Annual Aggregate	\$2,000,000 per occurrence, or claim \$4,000,000 Annual Aggregate

- K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The CONSULTANT agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this Agreement. The CONSULTANT shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the project now in the CITY'S files at no cost to the CONSULTANT. Confidential materials clearly marked as "Confidential" and so furnished will be kept confidential by the CONSULTANT unless disclosure is required by statute, law, regulation, or legal process.
- B. To provide standards as required for the project; however, reproduction costs are the responsibility of the CONSULTANT, except as specified in **Exhibit "A"**.
- C. To pay the CONSULTANT for his services in accordance with the requirements of this Agreement.
- D. To provide the right-of-entry for CONSULTANT'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The CITY agrees to advise, the CONSULTANT, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this Agreement. The CITY shall also advise the CONSULTANT of any changes in the person(s) designated Project Manager. Written notification shall be provided to the CONSULTANT for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT in a timely fashion.
- G. To the extent permitted under applicable law, CITY shall indemnify and hold CONSULTANT harmless from any and all claims, damages or causes of action which arise out of CITY'S use of deliverables provided by CONSULTANT under this Contract in circumstances where change to the CONSULTANT'S deliverables, or re-use of the same occurs, without the involvement of CONSULTANT.

IV. PAYMENT PROVISIONS

- A. Payment to the CONSULTANT for the performance of the professional services required by this Agreement shall be made on the basis of the not to exceed fee amount specified below:

Project No. 448 2023 004197	\$ 16,475
Project No. 468 2023 004198	\$ 19,845
Project No. 472 2023 085887	\$ 61,741
TOTAL	\$ 98,061

Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

- B. When requested by the CITY, the CONSULTANT will enter into a Supplemental Agreement for additional services related to the project such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the project.
 2. Additional design services not covered by the scope of this Agreement.
 3. Construction staking, material testing, inspection and administration related to the project.
 4. A major change in the SCOPE OF SERVICES for the project.

If additional work should be necessary, the CONSULTANT will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

- C. Notwithstanding anything to the contrary herein, if, caused by the CITY, schedule or dates are changed, or the orderly and continuous progress of CONSULTANT'S services is impaired, or CONSULTANT'S services are delayed or suspended, then the time for completion of CONSULTANT'S services, and the rates and amount of CONSULTANT'S compensation, shall be adjusted equitably.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. The CITY may terminate this Agreement at any time, upon written notice, in the event the project is to be abandoned or indefinitely postponed, or because of the CONSULTANT'S inability to proceed with the work.
1. Notwithstanding the foregoing, this Agreement will not terminate under paragraph V. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. In the event of termination by CITY for convenience or by CONSULTANT for cause, CONSULTANT, in addition to invoicing for those items identified in paragraph IV above, shall be entitled to invoice CITY and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CONSULTANT subcontractors, and other related close-out costs.
- B. That the field notes and other pertinent drawings and documents pertaining to the project shall become the property of the CITY upon completion or termination of the CONSULTANT'S services in accordance with this Agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that to the extent permitted under applicable law, CITY shall indemnify and hold CONSULTANT harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the project. Notwithstanding anything to the contrary herein, any and all underlying intellectual property, if any (unless provided by CITY), shall remain the property of CONSULTANT such that CONSULTANT may continue to perform its business in the ordinary course. Upon payment in full, CONSULTANT shall grant CITY an irrevocable, non-exclusive, royalty-free license to use the same for the purposes contemplated under this Agreement.
- C. That the services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this Agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the CONSULTANT shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- G. The rights and remedies of the CITY provided for under this Agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

- I. If the design or construction of the project has Federal or State money involved then the following provision shall be applied: Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the CITY and the CONSULTANT. This third party beneficiary status is for the limited purpose of seeking payment or imbursement for damages and cost the Secretary or the CITY or both incurred or will incur because the CONSULTANT failed to comply with its contractual obligations under this Agreement or because of the CONSULTANT'S negligent acts, errors, or omissions. Nothing in this provision precludes the CITY from seeking recovery or settling any dispute with the CONSULTANT as long as such settlement does not restrict the Secretary's right to payment or reimbursement.
- VI. **MUTUAL WAIVER.** To the fullest extent permitted by law, and notwithstanding any provision to the contrary, CITY and CONSULTANT waive against each other, and the other's employees, officers, directors, agents, insurers, partners, subcontractors, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the services under the Agreement.
- VII. Notwithstanding any provision to the contrary herein, CONSULTANT'S total aggregate liability under this Agreement, including without limitation those damages and liabilities arising from actions or inactions undertaken by the CONSULTANT relative to the Agreement, and associated SCOPE OF SERVICES, shall be limited as provided in the table below. This limitation covers all claims, regardless of whether the claims arise in contract, tort, strict liability or otherwise.

Limitation of Liability			
Construction Costs	\$0 to \$2,000,000	\$2,000,001 - \$4,000,000	+\$4,000,000
Total Limitation of Liability	CONSULTANT'S liability shall be limited to the greater of one hundred percent (100%) of CONSULTANT'S fee under the Agreement (which excludes assignments) or the insurance proceeds received up to the limits stated in Section II.J., based on applicable Construction Costs, plus the CONSULTANT'S obligations under the applicable policy for payment of deductibles and co-insurance payments.	CONSULTANT'S liability shall be limited to the greater of one hundred percent (100%) of CONSULTANT'S fee under the Agreement (which excludes assignments) or the insurance proceeds received up to the limits stated in Section II.J., based on applicable Construction Costs, plus the CONSULTANT'S obligations under the applicable policy for payment of deductibles and co-insurance payments.	CONSULTANT'S liability shall be limited to the greater of \$4,000,000 or one hundred percent (100%) of CONSULTANT'S fee received under this Agreement (which excludes assignments).

[Signatures follow]

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this Agreement as of the date first written above.

THE CITY OF WICHITA


Brandon J. Whipple, Mayor

SEAL:

ATTEST:


Jamie Buster, City Clerk

APPROVED AS TO FORM:



Jennifer Magaña, Director of Law and
City Attorney

GARVER, LLC



(Name/Title)
Christopher Bohm
Senior Project Manager

EXHIBIT "A"
SCOPE OF SERVICES

Lionsgate Addition
(south of Pawnee, east of 135th St. W.)
(Project Nos. 448-2023-004197; 468-2023-004198; 472-2023-085887)

The CONSULTANT shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1 to Exhibit "A".

In connection with the services to be provided, the CONSULTANT shall:

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the project limits prior to the CONSULTANT conducting the field survey for the project. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the CONSULTANT will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per Attachment No. 1 to Exhibit "A".
3. Soils and Foundation Investigations. The CITY may authorize CONSULTANT to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The CONSULTANT'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the CITY for the accuracy and competence of the Testing Laboratory's work. If required, the cost of soils and boring investigations shall be prepared as a supplemental agreement between City of Wichita and the CONSULTANT. This may be required for bridges, structures, retaining walls and other locations.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the project. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self-explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Plans & Specifications. Prepare engineering plans, plan quantities and supplemental specifications as required. Pay items of work shall conform to the CITY's Master Bid Item List. Engineering plans will include incidental drainage where required and permanent traffic signing. The project's plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1 to Exhibit "A". The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, CONSULTANT will also need to supply electronic files of the drawings in PDF format.

7. Landscaping. Where landscaping may be required along arterial streets, CONSULTANT should use plant material that is drought resistant and requires low maintenance in a xeriscape concept and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the Consultants' Design Team.
8. Property Acquisition. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. CONSULTANT will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the setting monuments of new corners for any additional right-of-way and a one-time marking of the right-of-way for utility relocations. **The CONSULTANT shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**
9. Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** CONSULTANT shall include a conflict list for each utility, also posted to the FTP site. CONSULTANT shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A"**) at each milestone date and as directed by the CITY and as determined necessary by the CONSULTANT. This information will be compiled into a summary report (**Attachment No. 4 to Exhibit "A", also available on the City's FTP site**) maintained and updated by CONSULTANT as necessary to present a cohesive and reflective status of utilities, and provided to the CITY as necessary. **CONSULTANT shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. CONSULTANT shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction. In no event is CONSULTANT responsible for damage to underground utilities, unmarked or improperly marked, caused by geotechnical conditions, pot-holing, construction, or other contractors or subcontractors working under a subcontract to the Agreement.
10. Staking Information. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.
11. Shop Drawings. All shop drawings submitted by the contractor for the project shall be reviewed and, when acceptable, approved for construction by the CONSULTANT for the project.
12. Public Meeting. The CONSULTANT shall meet with effected property owners, along with CITY staff, at a pre-construction Public Information Meeting, as arranged by the CITY, to explain project design, including such issues as construction phasing and traffic control.
13. New Right-of-Way Monumentation. The CONSULTANT shall complete permanent monumentation of all new right-of-way, and complete and submit all necessary legal documentation for same.
14. Section Corner Monuments. The CONSULTANT shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the CONSULTANT. The CITY will provide a three business day notice to the CONSULTANT to mark the monument location for re-establishment after pavement work is completed. The CITY will then core and install a cast iron monument box and cover. The CONSULTANT will be notified within three business days after the box is installed to reset the final monument.
15. Permits. The CONSULTANT shall prepare any and all necessary permits for this project, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The CONSULTANT shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the CONSULTANT.**

16. Project Milestones. The CONSULTANT agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the CITY within the time allotted for the project as stipulated below; EXCEPT that the CONSULTANT shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT.

Field Check Plans and an estimate for the project due by N/A.

Office Check Plans and an estimate for the project due by September, 2023.

Completion of all work required by this Agreement (including submittal of final approved plans, field notes, and related project documents by October, 2023.

Attachment No. 1 to Exhibit "A" – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water Division
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E., NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must also include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate. Bidding erosion control as "1 LS" is not allowed.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit "A"

Required Plan Coordinate Information

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

- Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:
- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves
-

IV. STORM SEWER

- Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:
- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet AND center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

- Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:
- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
- centerline @ 100' Sta on tangent sections
- PC/PT points & 50' along curves
- special drainage swales
- PC/PT points, pi's & 50' Sta in between
- ponds
- any grades breaks between pond bottom and rear property line
- PC/mid radius/PT around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

- Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:
- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.
- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves.
- ELEVATION SHALL BE TO TOP OF ROCK BASE.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's

- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit "A" – CIP Scope of Services

Project Name

Utility Location Verification for ULCC Sub-Committee Date of ULCC Meeting

Field Check: ☐ **Office Check:** ☐

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

- | | |
|---|---|
| <input type="checkbox"/> None in Project Limits | <input type="checkbox"/> In Project Limits, No Relocation Necessary |
| <input type="checkbox"/> Utility will need to relocate | <input type="checkbox"/> Utility is located in Private Easement |
| | <input type="checkbox"/> Private Easement Documentation Attached |
| <input type="checkbox"/> Utility will need to relocate and is interested in proposed ROW (IF applicable) | |

Briefly Describe Type and Location of Facilities within Project:

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No **If yes,** please explain: _____

Factors prerequisite to or that could affect relocation process (i.e. Regulatory Requirements):

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

Additional Information requested from Consultant: _____

Utility Requests Paper Plans (choose one): ☐ Full Size ☐ Half Size ☐ Cross-Sections (Full Size)

Please email this form by Due Date to:

Project Engineer Consultant
Company
Contact Information

cc: Right-of-Way and
Utility Coordinator,
Project Manager &
Chief Design Engineer

Revised 3/1/2021

Attachment No.4 to Exhibit "A" - Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	ROOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision		R/W Purchased	Date Utilities notified of R/W completion	Project Proposed Bid Date	Proposed Utility Clear Date (project)	
						Revision Distribution	Revision Distribution					
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
<div> <div>Utility Contact</div> <div>Utility needs to relocate (Y/N)</div> <div>Utility in Private Easement (Y/N)</div> <div>Utility needs R/W to relocate (Y/N)</div> <div>Relocation Weather Sensitive (Y/N)</div> <div>Estimated Date of Utility Design Completion</div> <div>Time needed for relocation after utility design complete</div> <div>Individual Utility Clear Date</div> </div>												
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions:** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability:** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose not permitted herein. Notwithstanding

anything herein to the contrary, the Contractor may retain back-up copies of the Confidential Information in its computer systems to the extent that routine computer back-up procedures create copies in the associated back-up or archival computer storage system, and as required to ensure compliance with applicable state or Federal statutes, laws or regulations; provided however, such information shall remain subject to the obligations of this Agreement. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

(Rev. 10/10/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Supplemental Design Agreement No. 1 for Improvements for Colt Meadows Addition Phase 1 (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Supplemental Design Agreement No. 1.

Background: On May 3, 2022, the City Council approved petitions for water, sanitary sewer, drainage, and paving improvements to serve Colt Meadows Addition, located south of MacArthur Road and east of Hoover Road. On February 14, 2023, the City Council approved the design services agreement.

Analysis: The proposed Supplemental Design Agreement No. 1 provides inspection services related to paving improvements. The Engineering Division has worked closely with the development community to create an effective partnership and business model for project management. As Engineering field staff's workload is currently at its optimal efficiency for production and cost, Supplemental Design Agreement No. 1 has been prepared for Baughman Company P.A., to provide the additional services. Baughman Company P.A., as the platting engineer for the developer, can provide the greatest quality service and expertise, as a supplement to City staff.

Financial Considerations: The design service fee to date is \$125,300. The cost of Supplemental Agreement No. 1 is \$24,000, which brings the total design fee to \$149,300. Funding is available within the existing budget approved by the City Council on May 3, 2022, which is 100% funded by special assessment.

Legal Considerations: Supplemental Design Agreement No. 1 has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Design Agreement No. 1 and authorize the necessary signatures.

Attachment: Supplemental Design Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED FEBRUARY 14, 2023
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
BAUGHMAN COMPANY, P.A.
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists an Agreement (dated February 14, 2023) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with improvements to the **COLT MEADOWS ADDITION, PHASE 1** (Project No.472-2022-085775_E2090-47471522).

WHEREAS, Paragraph IV. B. of the above referenced Agreement provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced Agreement is hereby amended to include the following:

**Inspection services for 42nd St. S., and Elder in
Colt Meadows Addition, Phase 1
(see attached Exhibit A)**

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this Supplemental Agreement shall be made on the basis of the not to exceed fee of **\$24,000**. Payments will be reviewed by the CITY upon presentment, and the undisputed sums will be paid according to the CITY's regular accounting procedures, with payment typically made within 30 days of approval.

C. COMPLETION

The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

- (a) Field check plans of the project for distribution to utilities by **N/A**.
- (b) Office check plans by **N/A**.
- (c) Completion of all work required by this agreement (including submittal of final approved plans, field notes, and related project documents by **October 27, 2023**).

D. PROVISIONS OF THE ORIGINAL AGREEMENT

The parties hereunto mutually agree that all provisions and requirements of the original Agreement, not specifically modified by this Supplemental Agreement, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2023.

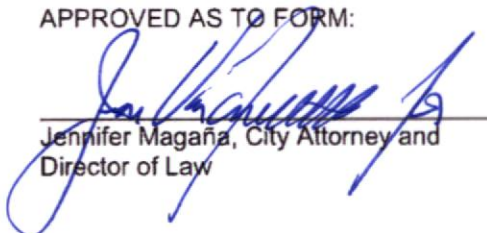
CITY OF WICHITA

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

APPROVED AS TO FORM:



Jennifer Magaña, City Attorney and
Director of Law

BAUGHMAN COMPANY, P.A.



Brent Wooten, President

From: Degenhardt, Steve
To: bwooten
Cc: Lowe, Steven; Kerns, Kyle; Schultze, Matthew
Subject: Consultant inspection services
Date: Wednesday, April 26, 2023 1:22:00 PM
Sensitivity: Private

Brent,

Due to the City's current work load and inspection staff levels, the City requests inspection services for the following project:

Colt Meadow PAV 472-2022-085775

Please let us know if Baughman can provide services for this project. City survey crews will perform the construction staking.

The estimated start date for the paving project is estimated to begin no sooner than the second week in May. Steven Lowe can provide updates on the schedule.

Costs for the supplemental agreement can be sent to Matt Schultze.

Please let us know if you have any questions.

Thank you.

Steve Degenhardt, P.E.
Construction Division Manager
Department of Public Works & Utilities | Engineering
1801 S. McLean Blvd.
Wichita, KS 67213
316-268-4043

**City of Wichita
City Council Meeting
September 12, 2023**

TO: Mayor and City Council

SUBJECT: Community Event with Alcohol Consumption – ICT Bloktoberfest (District I)

INITIATED BY: Department of Park & Recreation

AGENDA: Consent

Recommendation: Adopt the Resolution to allow alcohol consumption during the ICT Bloktoberfest community event occurring October 13-14, 2023.

Background: A Community Event Application that would establish a Temporary Entertainment District (TED) and allow alcohol consumption has been submitted for ICT Bloktoberfest, scheduled for October 13 and 14, 2023. In accordance with Section 3.11.065(d) of the Code of the City of Wichita and the Community Events Procedure, a resolution is required authorizing consumption of alcoholic liquor on sidewalks and on public streets, which have been closed to motor vehicle traffic during such licensed community event. The City Council has approved the request for street closures involved in this event; area businesses and residents have been notified of the street closures, which are depicted on the attached map. The TED will include St. Francis Avenue from Douglas Avenue to William Street and William Street from St. Francis Avenue to Commerce Street. Upon review of the application for this community event and upon consideration of the factors set forth in the Code of the City of Wichita, the City Council shall determine if such approval should be given.

Analysis: Section 3.11.080 of the Code of the City of Wichita sets forth criteria that must be considered for approval of a proposed community event. Those factors applicable to this event include findings that the event will not obstruct the operation of emergency vehicles or equipment; the event does not present a safety, noise, or traffic hazard; the event conforms to regulations regarding the use and/or the allowable number of participants for the proposed location; the proposed event does not violate any laws of the City of Wichita, State of Kansas or the United States; and that closures of public streets have been approved by the City Council. Applying this criteria, staff has reviewed the application of the ICT Bloktoberfest for a community event with consumption of alcoholic liquor allowed and finds that such criteria has been met and recommends approval of the event permit.





Financial Consideration: There are no financial considerations.

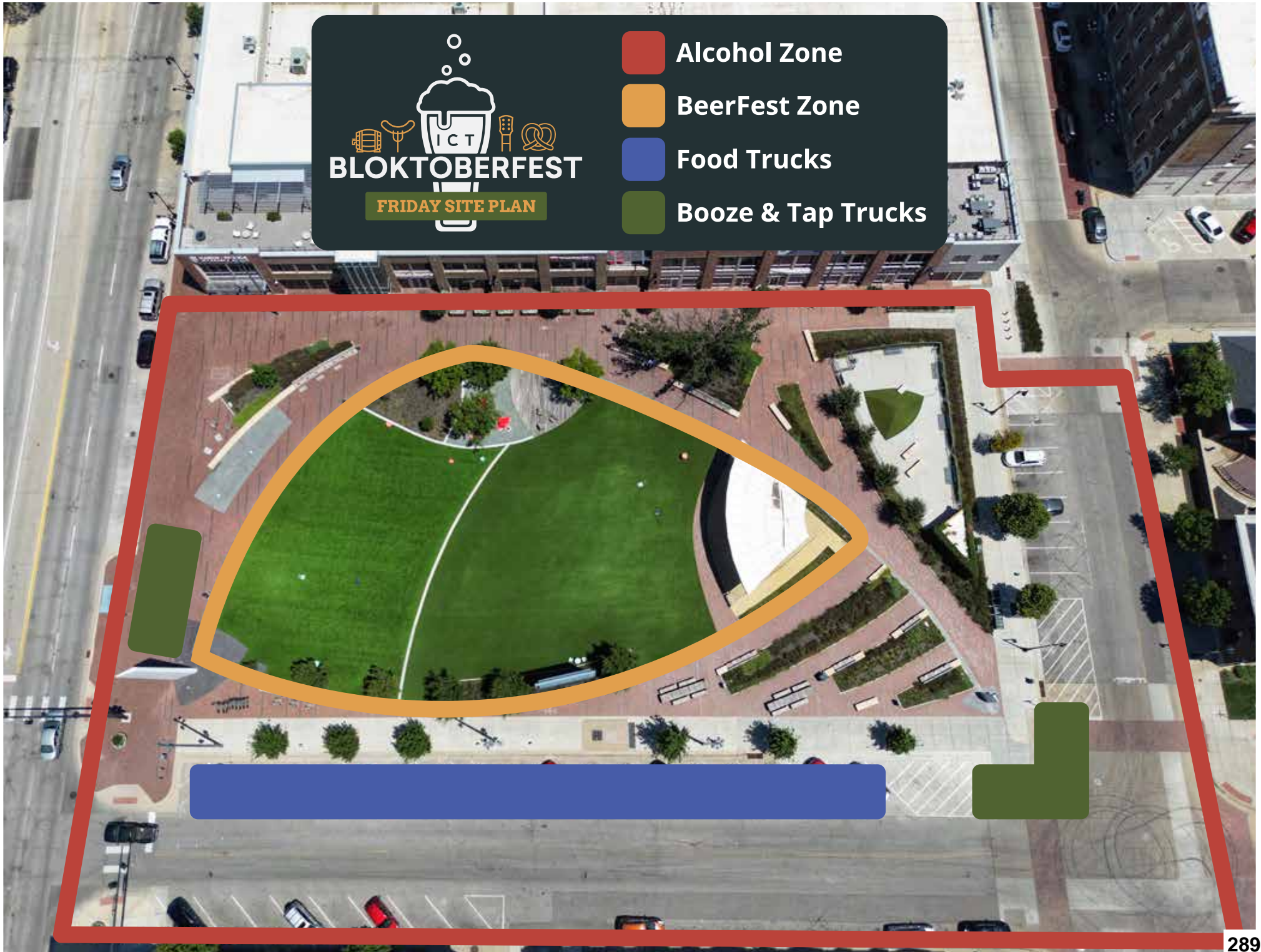
Legal Consideration: The Law Department has prepared and approved the resolution as to form.

Recommendation/Actions: It is recommended that the City Council adopt the resolution to allow alcohol consumption upon sidewalks and public streets within the parameters outlined in the Community Event Application during the ICT Bloktoberfest event occurring October 13-14, 2023, and authorize the necessary signatures.

Attachments: Resolution and map of proposed site for consumption of alcoholic liquor for ICT Bloktoberfest.



-  Alcohol Zone
-  BeerFest Zone
-  Food Trucks
-  Booze & Tap Trucks



RESOLUTION NO. 23-377

A RESOLUTION AUTHORIZING THE CONSUMPTION OF ALCOHOLIC LIQUOR ON PUBLIC STREETS DURING THE ICT BLOKTOBERFEST COMMUNITY EVENT

WHEREAS, the City Council has been proposed as a community event, ICT Bloktoberfest to occur October 13 and 14, 2023.

WHEREAS, the City Council has approved St. Francis Avenue from the sothern curb line of Douglas Avenue to the southern curb line of William Street and William Street from the eastern curb line of St. Francis Avenue to the eastern curb line of Commerce Street to be closed to vehicular traffic from 7:00 am on Friday, October 13 to 11:59 pm on Saturday, October 14, 2023, and with the consumption of alcoholic liquor allowed thereon from 4:00 pm to 11:00 pm on Friday, October 13, and from 11:00 am to 11:00 pm on Saturday, October 14, 2023.

WHEREAS, a temporary permit for the consumption of alcoholic liquor at ICT Bloktoberfest has been applied for and will be issued by the State of Kansas and the City of Wichita upon the presentation of this Resolution or a caterer licensed through the State of Kansas and the City of Wichita who has provided the required notification pursuant to K.S.A 41-2643 and amendments thereto, or a licensed business entity has been authorized to extend its licensed premises pursuant to K.S.A 41-2608 and amendments thereto.

NOW, THEREFORE, BE IT RESOLVED that the City Council, pursuant to Section 3.11.065(d) of the Code of the City of Wichita, and in consideration of the factors set forth in Section 3.11.080 of the Code of the City of Wichita, grants its approval for the consumption of alcoholic liquor on the city streets, sidewalks and public right of ways which are located within the designated event area of ICT Bloktoberfest as set forth above and to occur upon the dates and during the times above stated.

ADOPTED by the governing body of the City of Wichita, Kansas, this 12th day of September 2023.

CITY OF WICHITA, KANSAS

By _____
Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster
City Clerk

Approved as to Form:

Jennifer Magana, City Attorney &
Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Funding for West Street, Interstate 235 to MacArthur Road
(District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the revised budget and adopt the amending resolution.

Background: On January 12, 2021, the City Council approved funding for a design concept to improve West Street between Interstate 235 (I-235) and MacArthur Road. On July 20, 2021, the City Council approved an agreement with WSP for a design concept. On March 7, 2022, District Advisory Board (DAB) IV approved the proposed design concept 9 to 1. On April 5, 2022, the City Council approved the Supplemental Design Agreement No. 1 and revised budget.

Analysis: West Street, between I-235 and MacArthur Road, is currently a two-lane street with ditches on each side and no sidewalks. The proposed design provides for an expanded five-lane roadway, including a center turn lane, new traffic signal at MacArthur Road, curb and gutter, and improved drainage. The project will also include a 10-foot-wide multi-use path on the east side of West Street. Construction is planned for 2025 and one lane of traffic will be maintained at all times during construction.

Financial Considerations: The existing budget of \$425,000 was approved by the City Council on April 5, 2022. The Adopted 2024-2033 Capital Improvement Program includes \$1,900,000 in Local Sales Tax funding and \$4,194,154 in federal funds for this project. Staff recommends initiating \$300,000 for right-of-way acquisition, utility relocation, and project management, which brings the revised budget to \$725,000.

Legal Consideration: The Law Department has reviewed and approved the amending resolution as to form.

Recommendation/Actions: It is recommended that the City Council approve the revised budget, adopt the amending resolution, and authorize the necessary signatures.

Attachment: Amending resolution.

RESOLUTION NO. 23-378

A RESOLUTION AMENDING RESOLUTION NO. 22-093 DECLARING IT NECESSARY TO ISSUE GENERAL OBLIGATION SALES TAX BONDS OF THE CITY OF WICHITA, KANSAS, FOR THE PURPOSE OF PAYING THE COSTS OF FINANCING ROAD AND HIGHWAY IMPROVEMENTS OF THE CITY; AND PROVIDING FOR THE GIVING OF NOTICE OF SAID INTENTION AS REQUIRED BY LAW.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, Sedgwick County, Kansas (the “County”) pursuant to the authority of K.S.A. 12-187 *et seq.* (the “Act”) imposes a one percent (1%) retailers’ sales tax within the County (the “Sales Tax”); and

WHEREAS, pursuant to the Act, the City is the recipient of funds derived from the Sales Tax and is authorized pursuant to K.S.A. 12-195b to issue general obligation bonds secured by a pledge of the Sales Tax, provided certain procedural requirements contained in the Act are satisfied and the city obtains a comprehensive feasibility study showing that the City’s revenues from such Sales Tax will be sufficient to retire such Bonds; and

WHEREAS, pursuant to the Act, the City Council (the “Governing Body”) of the City has heretofore passed Ordinance No. 41-815 pledging one-half of the City’s receipts from the Sales Tax for the purpose of financing the costs of road, highway and bridge projects in the city and related right-of-way acquisition; and

WHEREAS, the Governing Body has heretofore by **Resolution No. 22-093** of the City (the “Prior Resolution”), authorized the following described public improvements:

WHEREAS, the Governing Body, by separate Resolution, has found it necessary and desirable to make certain public road and highway improvements described as “design and staff oversight for improvements for **design, staff oversight, and right-of-way acquisition for West Street from I-235 to MacArthur Road (472-2020-085682)**”; and

(the “Project”) and provided for the payment of all or a portion of the costs thereof by the issuance of general obligation bonds of the City pursuant to the Act.

WHEREAS, the Governing Body now deems it necessary and desirable to expand the scope of work to include utility relocation to the Amended Project:

Design, staff oversight, right-of-way acquisition and utility relocation for West Street from I-235 to MacArthur Road (472-2020-085682); and

WHEREAS, the City is authorized under the laws of the State of Kansas to issue general obligation bonds to construct the Improvements; and

WHEREAS, the Governing Body hereby finds and determines it to be necessary to issue sales tax/general obligation bonds under the authority of the Act for purposes of financing the costs of the Improvements and to pledge fifty percent (50%) of the City’s revenues from the Sales Tax to the payment of such sales tax/general obligation bonds:

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS,
AS FOLLOWS:**

Section 1. Amendment. *Section 1* of the **Prior Resolution** is hereby amended to read as follows:

Section 1. Amendment. *Sections 1 and 2* of **Resolution No. 21-012** are hereby amended to read as follows:

Section 1. Bond Authorization. It is hereby determined and declared to be necessary to issue sales tax/general obligation bonds for the purpose of paying **\$725,000** of the costs of the Improvements and related interest and financing costs (the "Bonds"). The Bonds shall be general obligation bonds of the City, to be paid and secured by a pledge of a portion of the City's receipts from the Sales Tax as set forth in Section 2 hereof, and, if not so paid, shall be paid from ad valorem taxes which may be levied by the City for such purpose without limit as to rate or amount. The Bonds may be issued to reimburse expenditures made on or after the date which was 60 days before the date of adoption of **Resolution No. 21-012**, to the extent of additional Bonds originally authorized under **Resolution No. 22-093**, to the extent of Bonds originally authorized therein, and additional expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, to the extent of the increased authorization contained herein, all pursuant to Treasury Regulation § 1.150-2 made before the date of adoption of this Resolution, pursuant to Treasury Regulation § 1.150-2.

Section 2. Pledge of Sales Tax. The Governing Body hereby pledges fifty percent (50%) of City's revenues from the Sales Tax to the payment of the Bonds.

Section 3. Publications. This Resolution shall be published once a week for two (2) consecutive weeks in the official newspaper of the City. If within thirty (30) days after the final publication, there shall be filed with the Sedgwick County Election Commissioner, a written petition requesting an election on the issuance of the Bonds and the pledge of the Sales Tax, signed by not less than five percent (5%) of the electors of the City who voted at the last preceding general election of the City, then no such Bonds shall be issued or Sales Tax pledged unless such proposition shall be submitted to and approved by a majority of the voters of the City voting at an election held thereon. If no sufficient protest is filed within the period of time hereinbefore stated, then the Governing Body shall be authorized to issue the Bonds pursuant to the act and pledge a portion of the City's portion of the Sales Tax to the payment thereof.

Section 4. Conditional Repeal of Section 1 of the Prior Resolution. In the event no sufficient protest petition is filed in accordance with the Sales Tax Act against the Project and the Bonds as set forth in **Section 3** hereof, Section 1 of the Prior Resolution, as it previously existed, is hereby repealed and replaced by the amended version set forth above. If a protest petition is filed and a required referendum does not approve the Project and the Bonds, Section 1 of the Prior Resolution shall remain in full force and effect with respect to the Project and the Bonds authorized therein.

Section 5. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on September 12, 2023.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña, City Attorney and Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: Transit Center and Parking Garages Security Guard Novation Contract

INITIATED BY: Transportation Department

AGENDA: Consent

Recommendation: Approve the novation contracts for St. Moritz Group to provide security guard services for the Transit Center and parking garages.

Background: On December 8, 2020, the City Council approved a contract with AgTac Services LLC, to provide security guard services at the Transit Center.

Analysis: On June 23, 2023, St. Moritz Security Services acquired AgTac, which includes the contracts with the City of Wichita Transportation Department. The novation contracts support the ownership change and transition of the contracts between the parties.

Financial Consideration: St. Moritz's has agreed to retain current pricing and terms through the end of the final renewal period ending December 31, 2023.

Legal Consideration: The Law Department has reviewed and approved the contract as to form.

Recommendation/Actions: It is recommended that the City Council approve the novation contracts with St. Moritz Group for continued security guard services at the Transit Center and parking garages and authorize the necessary signatures.

Attachments: St. Moritz Group novation contracts

CONTRACT NOVATION
for
SECURITY SERVICES TRANSIT CENTER
23200069

THIS CONTRACT NOVATION is entered into this 12th day of September 2023, between the **City of Wichita, KANSAS**, A Municipal Corporation, hereinafter called "**CITY**", and **ST. MORITZ SECURITY SERVICES, INC.**, whose principal office is at 4600 Clairton Blvd., Pittsburgh, Pennsylvania 15236, hereinafter called "**Contractor or Vendor**".

WHEREAS, on the 8th day of December 2020, the **CITY** and AGTAC Services, LLC, entered into a contract (Exhibit C) for **Security Services Transit Center** for the **City of Wichita**, as per the solicitation number - FP203141 and its specifications of May 5, 2020; and

WHEREAS, ST. MORITZ SECURITY SERVICES, INC. has acquired on June 23, 2023, the assets of AGTAC Services, LLC, including certain contract rights, and AGTAC Services, LLC has acknowledged the same to **CITY**, and

NOW, THEREFORE, ST. MORITZ SECURITY SERVICES, INC. agrees to undertake all duties and obligations of the contractor or vendor under the above-described contract, and **CITY** agrees to accept **ST. MORITZ SECURITY SERVICES, INC.** as a substitute party under the contract, for all purposes, including receipt of payment as well as performance. **CITY** and **ST. MORITZ SECURITY SERVICES, INC.** hereby reaffirm and re-execute the terms of the original contract dated the 8th day of December 2020, and its renewals, for and on behalf of these parties.

EFFECTIVE with this Novation document, the original contract number is changed from 20200298 to contract number 23200069.

The attached **Exhibits A, B, C and D** are incorporated into this novation of the original contract by reference, and acceptance of this contract novation acts as an acceptance of these additional terms.

IN WITNESS WHEREOF, the parties hereto have executed this contract novation the day and year first above written.

ATTEST:


THE CITY OF WICHITA

Jamie Buster
City Clerk


Brandon J. Whipple
Mayor

APPROVED AS TO FORM:

ST. MORITZ SECURITY SERVICES, INC.



Jennifer Magana
City Attorney and Director of Law



Signature

Brian K. Fiscus
Print Signature Name

CFO
Title (President or Corporate Officer)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*). It is understood that the duty to indemnify or hold harmless includes the duty to defend. This indemnification and hold harmless clause shall apply whether or not insurance policies shall have been determined to be applicable to any of such damages or claims for damages. In no event shall either party be obligated to indemnify the other on account of the negligence or willful misconduct of the party seeking indemnity or any agent or employee thereof.
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state, and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption. City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor

must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state, and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet, or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
19. **Bankruptcy.** Contractor shall be considered to be in default of this Contract in the event Contractor (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by Contractor for the purpose of effecting any of the foregoing.

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

**CONTRACT
for
SECURITY SERVICES TRANSIT CENTER**

CONTRACT NUMBER 20200298

THIS CONTRACT entered into the 8th day of December, 2020, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **AGTAC SERVICES, LLC**, whose principal office is located at 8200 Cody Drive, Suite F, Lincoln, Nebraska 68512 Telephone Number (402) 413-5000 hereinafter called "**VENDOR**".

WHEREAS, the **CITY** has solicited a request for proposal for **Security Services Transit Center (FP-203141)**; and

WHEREAS, **VENDOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services.** **VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to formal proposal FP-203141, which are incorporated herein by this reference the same as if it were fully set forth. The attached Exhibits and the proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the bid letting process for solicitation number FP-203141, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **VENDOR** the amount specified in, and attached hereto, as Addendum A under **Pricing Specifications**, for **Security Services Transit Center**, for FP-203141, for the Transit Department, Transportation Division, as per the **VENDOR'S** proposal dated May 5, 2020, and as approved by City Council on November 10, 2020 for the following location:

Location	Hourly Rate	AVG Monthly Rate
214 S. Topeka Avenue (Transit Center)	\$17.40	\$5,749.25

3. **Term.** The term of this contract shall be from **January 10, 2021 through December 31, 2021**, with options to renew under the same terms and conditions for one (1) or two (2) additional one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation by the City at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

4. Indemnification and Insurance.

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Commercial General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence \$500,000 each aggregate
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Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate
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2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each accident
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3. Workers' Compensation to meet statutory requirements.

4. Employers Liability	\$100,000 Each Accident
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\$500,000 Aggregate
\$100,000 Occupational Disease

The Insurance Certificate must contain the following:

The City of Wichita shall be added as primary and non-contributory additional insured. The policy shall also provide coverage for contractor's/vendor's contractual obligations created in the Agreement. Coverage shall be the greater of the requirements stated here or the contractor's existing policy.

5. No Assignment. The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

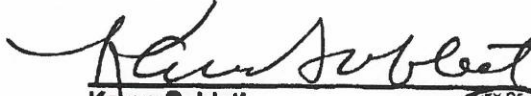
6. Incorporation. Exhibits A and B, attached, are incorporated into this Contract as essential terms.

7. Third Party Exclusion. This agreement is intended solely for the benefit of City and Contractor/vendor and is not intended to benefit, either directly or indirectly, any third party or members (s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.

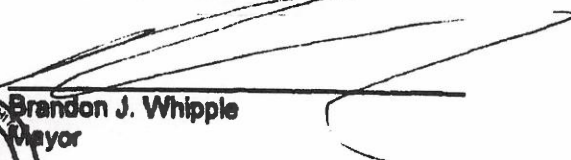
IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

CITY OF WICHITA, KANSAS



Karen Sublett
City Clerk



Brandon J. Whipple
Mayor

APPROVED AS TO FORM:

AGTAC SERVICES, LLC



Jennifer Magana
City Attorney & Director of Law



Signature

Jessica Durbin

Print Name

VP of Operations

Title (Managing Member)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et

seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.
12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total \$5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and

activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this Exhibit is incorporated.

(Rev. 8/28/2019)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder.
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes; (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions; (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.



Security Pricing for the City of Wichita >>>

Position	Hours per Week	Regular Bill Rate	Overtime/Holiday Rate	Stipend Rate	Weekly Billing
Security Manager	40	\$17.40	\$26.10	\$14.00	\$696.00
Security Officers	128	\$17.40	\$26.10	\$12.50	\$2,227.20
Security Vehicle					\$250.00
Weekly Totals	168				\$3,173.20

The hourly bill rates include the following items:

- Trackforce Technology monthly service package including: cell phone, customized client dashboard, all reporting functionality, GPS tracking, geofencing and geo location, smart touring system, training and compliance recording, incident, and daily activity reporting.
- Professional security certification for all personnel through Private Security Professionals of America including lifetime membership for continuous career development
- All officer training including new officer orientation, site specific training hours, and customer service training
- Employee wages, payroll taxes and insurance
- Free employee life insurance policy of up to \$10,000 per employee
- Paid vacation for all employees: Hourly employees receive 1 week of paid vacation per year. Additional sick pay required by certain state regulations will be billed as incurred. ATS will honor additional vacation requested and approved by client to be billed to client as incurred.
- All officer uniforms and replacements as needed including safety vests.
- Recruiting, background screening and drug testing for all security personnel.
- Site vehicle equipped with Security signage, lightbar, and spotlight as specified in the above weekly billing. Insurance cost is included in billing. Fuel will be direct billed.

Additional costs:

- ATS will absorb the cost of Health and Welfare for one employee per month to subsidize the cost to the City. Health and Welfare costs will only be billed to the City if the enrollment rate exceeds the national average of 33% and more than one employee elects for coverage. This cost will be billed only as incurred without markup. Average cost for 2020 is estimated at \$325 per month per employee. This cost may change in future years and any changes will be communicated to the City promptly.
- Holiday pay for six company recognized holidays will be billed at one- and one-half times the regular bill rate and employees will be paid at one- and one-half times their regular hourly rate. Recognized holidays include: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

Addendum A



- Fuel charges will be direct billed as incurred. A hybrid vehicle will be utilized by ATS to reduce cost as much as possible.

Contract Extensions:

ATS agrees to hold the current markup fixed for a period of three years, which accounts for an initial one-year contract term and two optional annual extensions. The weekly vehicle pricing, excluding fuel, will remain fixed over the life of the three-year period. All listed inclusions and patrols will also remain constant over the life of the contract. If the optional extensions are exercised, ATS agrees to cap the contract spend not to exceed 11% on hourly bill rates. The increased billing will be the direct result of an agreed upon wage increase.

Pricing Specifications:

Transit Center Only Security Days/Hours by the Month 7/30/20

Security guard Days/hours at the Transit Center. Holidays are not included in these calculations.

Days per month

January- 25
February- 24 (Includes leap day)
March- 26
April- 26
May- 25
June- 26
July- 26
August- 26
September- 25
October- 27
November- 23
December- 26

Total number of days for the year	305
Hours per day	<u>x 13</u>
Hours per year	3965
Cost per hour	<u>x 17.40</u>
Annual cost for Transit Center Only	\$68,991.
Divided by 12 months	\$5,749.25 per month average

If more than one AGTAC employee elects the Health and Welfare benefit the estimated \$325.00 is to be applied to the Parking invoice. Direct bill for fuel is to be applied to Parking invoice. The \$250.00 Security Vehicle charge is to be applied to the Parking invoice. Service hours not included on the Transit Center calculations will be billed to the Parking invoice.



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

November 8, 2021
20200298

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated December 8, 2020, with your firm for **Security Services for Transit Center** (Formal Proposal – 203141) for the Transit Department, Transportation Division of the City of Wichita. This is to be per your proposal and the specifications of May 5, 2020 and as approved by City Council on November 10, 2020.

The renewal of this contract shall be for a one (1) year period, from **January 1, 2022 through December 31, 2022**, with options to renew under the same terms and conditions for one (1) additional one (1) year period by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

If you are in full agreement with the renewal of this contract, **please have a managing member of your company sign and return one copy of this letter to our Purchasing Office.** A second copy should be retained for your files.

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/am
Attachment

AGTAC SERVICES, LLC

A handwritten signature in black ink, appearing to read 'Jessica Durbin', written over a horizontal line.

Signature

Jessica Durbin

Print Name

Vice President of Operations

Title (*Managing Member*)

720-561-9971

Telephone Number



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

December 9, 2021
20200298 – Price Increase

Ladies &/or Gentlemen:

Please be advised that the City of Wichita hereby acknowledges receipt of notification and accepts the price increase change on **Security Services for Transit Center** for the Transit Department, Transportation Division of the City of Wichita at the following quoted prices effective January 1, 2022:

LOCATION	HOURLY RATE	
	Security Officers	Security Supervisors
214 S. Topeka Avenue (Transit Center)	\$18.44	\$18.64

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/am
Attachment



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

October 18, 2022
20200298

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated December 8, 2020, with your firm for **Security Services for Transit Center** (Formal Proposal – 203141) for the Transit Department, Transportation Division of the City of Wichita. This is to be per your proposal and the specifications of May 5, 2020 and as approved by City Council on November 10, 2020.

The renewal of this contract shall be for a one (1) year period, from **January 1, 2023, through December 31, 2023**, by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

If you are in full agreement with the renewal of this contract, **please have a managing member of your company sign and return one copy of this letter to our Purchasing Office.** A second copy should be retained for your files.

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/rc

AGTAC SERVICES, LLC

A handwritten signature in black ink, appearing to read 'Derek Dibbens', written over a horizontal line.

Signature

Derek Dibbens

Print Name

Account Manager

Title (*Managing Member*)

316-833-6571

Telephone Number

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state, and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption. City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.
12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so

as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state, and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet, or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
19. **Bankruptcy.** Contractor shall be considered to be in default of this Contract in the event Contractor (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by Contractor for the purpose of effecting any of the foregoing.

(Rev. 05/10/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

October 18, 2022
20200298

Ladies and/or Gentlemen:

Please be advised that the City of Wichita hereby acknowledges receipt of notification and accepts the pricing change on January 1, 2023, for **Security Services Transit Center**.

LOCATION	HOURLY RATE	
	Security Officers	Security Supervisors
214 S. Topeka Avenue (Transit Center)	\$19.47	\$19.47

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/rc

ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract in accordance with 2 CFR § 200.337.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

1 Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:

- a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
- b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2 Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3 Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4 Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any

implementing requirements FTA may issue.

5.Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will **320**

receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

NOTICE TO THIRD PARTY PARTICIPANTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

FLY AMERICA

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of the contract. **321**

any subagreement.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

NOTIFICATION TO FTA

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its sub agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

PATENT RIGHTS AND RIGHTS IN DATA

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

PROMPT PAYMENT

(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
- (3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

SEVERABILITY

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

TERMINATION

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. Thi

liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

TRAFFICKING IN PERSONS

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred,
2. Suspended,
3. Proposed for debarment,
4. Declared ineligible,
5. Voluntarily excluded, or
6. Disqualified,

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or,
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

1. Equals or exceeds \$25,000,,
2. Is for audit services, or,
3. Requires the consent of a Federal official, and


g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor: St. Moritz Security Services, Inc.

Signature of Authorized Official:  Date 8 / 29 / 2023

Name and Title of Contractor's Authorized Official: Brian K. Fiscus, CFO

CONTRACT NOVATION
for
SECURITY SERVICES FOR PUBLIC PARKING LOCATIONS
23200070

THIS CONTRACT NOVATION is entered into this 12th day of September 2023, between the **City of Wichita, KANSAS**, A Municipal Corporation, hereinafter called "**CITY**", and **ST. MORITZ SECURITY SERVICES, INC.**, whose principal office is at 4600 Clairton Blvd., Pittsburgh, Pennsylvania 15236, hereinafter called "**Contractor or Vendor**".

WHEREAS, on the 8th day of December 2020, the **CITY** and AGTAC Services, LLC, entered into a contract (Exhibit C) for **Security Services for Public Parking Locations** for the **City of Wichita**, as per the solicitation number - FP203141 and its specifications of May 5, 2020; and

WHEREAS, **ST. MORITZ SECURITY SERVICES, INC.** has acquired on June 23, 2023, the assets of AGTAC Services, LLC, including certain contract rights, and AGTAC Services, LLC has acknowledged the same to **CITY**, and

NOW, THEREFORE, ST. MORITZ SECURITY SERVICES, INC. agrees to undertake all duties and obligations of the contractor or vendor under the above-described contract, and **CITY** agrees to accept **ST. MORITZ SECURITY SERVICES, INC.** as a substitute party under the contract, for all purposes, including receipt of payment as well as performance. **CITY** and **ST. MORITZ SECURITY SERVICES, INC.** hereby reaffirm and re-execute the terms of the original contract dated the 8th day of December 2020, and its renewals, for and on behalf of these parties.

EFFECTIVE with this Novation document, the original contract number is changed from 20200244 to contract number 23200070.

The attached **Exhibits A and B** are incorporated into this novation of the original contract by reference, and acceptance of this contract novation acts as an acceptance of these additional terms.

IN WITNESS WHEREOF, the parties hereto have executed this contract novation the day and year first above written.

ATTEST:


THE CITY OF WICHITA

Jamie Buster
City Clerk

Brandon J. Whipple
Mayor

APPROVED AS TO FORM:

ST. MORITZ SECURITY SERVICES, INC.



Jennifer Magana
City Attorney and Director of Law



Signature

Brian K. Fiscus
Print Signature Name

CFO
Title (President or Corporate Officer)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*). It is understood that the duty to indemnify or hold harmless includes the duty to defend. This indemnification and hold harmless clause shall apply whether or not insurance policies shall have been determined to be applicable to any of such damages or claims for damages. In no event shall either party be obligated to indemnify the other on account of the negligence or willful misconduct of the party seeking indemnity or any agent or employee thereof.
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state, and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption. City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor

must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state, and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet, or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
19. **Bankruptcy.** Contractor shall be considered to be in default of this Contract in the event Contractor (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by Contractor for the purpose of effecting any of the foregoing.

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

**CONTRACT
for
SECURITY SERVICES FOR PUBLIC PARKING LOCATIONS**

CONTRACT # 20200244

THIS CONTRACT entered into the 8TH day of December, 2020, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **AGTAC SERVICES, LLC**, whose principal office is located at 8200 Cody Drive, Suite F, Lincoln, Nebraska 68512 Telephone Number (402) 413-5000 hereinafter called "**VENDOR**".

WHEREAS, the **CITY** has solicited a request for proposal for **Security Services for Public Parking Locations (FP-203141)**; and

WHEREAS, **VENDOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services.** **VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to formal proposal FP-203141, which are incorporated herein by this reference the same as if it were fully set forth. The attached Exhibits and the proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the bid letting process for solicitation number FP-203141, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **VENDOR** the amount specified in, and attached hereto, as Addendum A, for **Security Services for Public Parking Locations**, for FP-203141, for the Transit Department, Transportation Division, as per the **VENDOR'S** proposal dated May 5, 2020, and as approved by City Council on November 10, 2020, for the following locations:

LOCATION	HOURLY RATE
215 S. Market - Vehicle Patrol & Guard Patrol	\$17.40
121 S. Emporia - Vehicle Patrol & Guard Patrol	\$17.40
360 E. William - Vehicle Patrol & Guard Patrol	\$17.40
215 N. Mosley - Vehicle Patrol & Guard Patrol	\$17.40
325 N. Moore - Vehicle Patrol & Guard Patrol	\$17.40

3. Term. The term of this contract shall be from **January 10, 2021 through December 31, 2021**, with options to renew under the same terms and conditions for one (1) or two (2) additional one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation by the City at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR**.

4. Indemnification and Insurance.

a. VENDOR shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons, property or other liability loss arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. CONTRACTOR will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Commercial General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence
	\$500,000 each aggregate

Property Damage Liability	\$500,000 each occurrence
	\$500,000 each aggregate

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence
	\$500,000 each aggregate

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident

Or

Bodily Injury and Property Damage
Liability (Combined Single Limit) \$500,000 each accident

3. Workers' Compensation to meet statutory requirements.

4. Employers Liability \$100,000 Each Accident
\$500,000 Aggregate
\$100,000 Occupational Disease

The Insurance Certificate must contain the following:

The City of Wichita shall be added as primary and non-contributory additional insured. The policy shall also provide coverage for contractor's/vendor's contractual obligations created in the Agreement. Coverage shall be the greater of the requirements stated here or the contractor's existing policy.

5. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

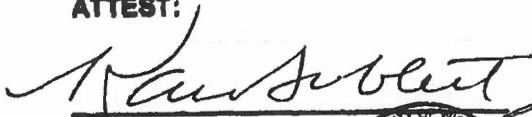
6. **Incorporation.** Exhibits A and B, attached, are incorporated into this Contract as essential terms.

7. **Third Party Exclusion.** This agreement is intended solely for the benefit of City and Contractor/vendor and is not intended to benefit, either directly or indirectly, any third party or members (s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.

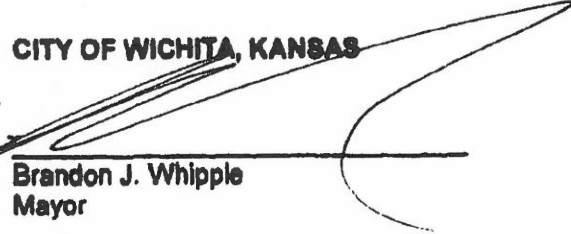
IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

CITY OF WICHITA, KANSAS



Karen Sublett
City Clerk


Brandon J. Whipple
Mayor

APPROVED AS TO FORM:

AGTAC SERVICES, LLC



Jennifer Magana
City Attorney & Director of Law



Signature

Jessica Durbin
Print Name

VP of Operations
Title (Managing Member)

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et*

seq.), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.

10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 et seq.) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.
12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total \$5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and

activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.

15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this Exhibit is incorporated.

(Rev. 8/28/2019)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder.
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes; (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions; (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.



Security Pricing for the City of Wichita >>>

Item	Quantity	Hourly Rate	Hourly Rate	Hourly Rate	Total
Security Manager	40	\$17.40	\$26.10	\$14.00	\$696.00
Security Officers	128	\$17.40	\$26.10	\$12.50	\$2,227.20
Security Vehicle					\$250.00
Weekly Totals	168				\$3,173.20

The hourly bill rates include the following items:

- Trackforce Technology monthly service package including: cell phone, customized client dashboard, all reporting functionality, GPS tracking, geofencing and geo location, smart touring system, training and compliance recording, incident, and daily activity reporting.
- Professional security certification for all personnel through Private Security Professionals of America including lifetime membership for continuous career development
- All officer training including new officer orientation, site specific training hours, and customer service training
- Employee wages, payroll taxes and insurance
- Free employee life insurance policy of up to \$10,000 per employee
- Paid vacation for all employees: Hourly employees receive 1 week of paid vacation per year. Additional sick pay required by certain state regulations will be billed as incurred. ATS will honor additional vacation requested and approved by client to be billed to client as incurred.
- All officer uniforms and replacements as needed including safety vests.
- Recruiting, background screening and drug testing for all security personnel.
- Site vehicle equipped with Security signage, lightbar, and spotlight as specified in the above weekly billing. Insurance cost is included in billing. Fuel will be direct billed.

Additional costs:

- ATS will absorb the cost of Health and Welfare for one employee per month to subsidize the cost to the City. Health and Welfare costs will only be billed to the City if the enrollment rate exceeds the national average of 33% and more than one employee elects for coverage. This cost will be billed only as incurred without markup. Average cost for 2020 is estimated at \$325 per month per employee. This cost may change in future years and any changes will be communicated to the City promptly.
- Holiday pay for six company recognized holidays will be billed at one- and one-half times the regular bill rate and employees will be paid at one- and one-half times their regular hourly rate. Recognized holidays include: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.

Addendum A



- Fuel charges will be direct billed as Incurred. A hybrid vehicle will be utilized by ATS to reduce cost as much as possible.

Contract Extensions:

ATS agrees to hold the current markup fixed for a period of three years, which accounts for an initial one-year contract term and two optional annual extensions. The weekly vehicle pricing, excluding fuel, will remain fixed over the life of the three-year period. All listed inclusions and patrols will also remain constant over the life of the contract. If the optional extensions are exercised, ATS agrees to cap the contract spend not to exceed 11% on hourly bill rates. The increased billing will be the direct result of an agreed upon wage increase.

Pricing Specifications:

Transit Center Only Security Days/Hours by the Month
7/30/20

Security guard Days/hours at the Transit Center. Holidays are not included in these calculations.

Days per month

January- 25
February- 24 (Includes leap day)
March- 26
April- 26
May- 25
June- 26
July- 26
August- 26
September- 25
October- 27
November- 23
December- 26

Total number of days for the year	305
Hours per day	<u>x 13</u>
Hours per year	3965
Cost per hour	<u>x 17.40</u>

Annual cost for Transit Center Only \$68,991.

Divided by 12 months \$5,749.25 per month average

If more than one AGTAC employee elects the Health and Welfare benefit the estimated \$325.00 is to be applied to the Parking invoice. Direct bill for fuel is to be applied to Parking invoice. The \$250.00 Security Vehicle charge is to be applied to the Parking invoice. Service hours not included on the Transit Center calculations will be billed to the Parking invoice.



Pinnacle Actuarial Resources, Inc.
3109 Cornelius Drive
Bloomington, IL 61704

October 14, 2021
20200040

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated January 1, 2020 with your firm to provide **2020 Actuarial Services for Self-Funded Automotive Liability, General Liability and Worker's Compensation Liability** (Formal Proposal – FP190064) for the Finance Department / Risk Management Division of the City of Wichita. This is to be per your proposal and the specifications of November 8, 2019.

The renewal of this contract shall be for a one (1) year period, from **January 1, 2022 through December 31, 2022**, with options to renew under the same terms and conditions for two (2) additional one (1) year periods by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

If you are in full agreement with the renewal of this contract, **please have the president or a corporate officer sign and return one copy of this letter to our Purchasing Office.** The second copy should be retained for your files.

Sincerely,

Jason Brogden
for Melinda A. Walker
Purchasing Manager

MAW/HL/am
Attachment

PINNACLE ACTUARIAL RESOURCES, INC.

Joseph A. Herbers

Signature

Managing Principal and President
Title (President or Corporate Officer)

Joseph A. Herbers
Print Name

309.807.2300
Telephone Number



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

December 9, 2021
20200244 – Price Increase

Ladies &/or Gentlemen:

Please be advised that the City of Wichita hereby acknowledges receipt of notification and accepts the price increase change on **Security Services for Public Parking Locations** for the Transit Department, Transportation Division of the City of Wichita at the following quoted prices effective January 1, 2022:

LOCATION	HOURLY RATE	
	Security Officers	Security Supervisors
215 S. Market - Vehicle Patrol & Guard Patrol	\$18.44	\$18.64
121 S. Emporia - Vehicle Patrol & Guard Patrol	\$18.44	\$18.64
360 E. William – Vehicle Patrol & Guard Patrol	\$18.44	\$18.64
215 N. Mosley - Vehicle Patrol & Guard Patrol	\$18.44	\$18.64
325 N. Moore – Vehicle Patrol & Guard Patrol	\$18.44	\$18.64

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/am
Attachment



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

October 18, 2022
20200244

Ladies &/or Gentlemen:

The City of Wichita wishes to exercise its option to renew its contract dated December 8, 2020, with your firm for **Security Services for Public Parking Locations** (Formal Proposal – 203141) for the Transit Department, Transportation Division of the City of Wichita. This is to be per your proposal and the specifications of May 5, 2020 and as approved by City Council on November 10, 2020.

The renewal of this contract shall be for a one (1) year period, from **January 1, 2023, through December 31, 2023**, by mutual agreement of both parties. This contract is subject to cancellation upon thirty (30) days written notice by the City of Wichita.

If you are in full agreement with the renewal of this contract, **please have a managing member of your company sign and return one copy of this letter to our Purchasing Office.** A second copy should be retained for your files.

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/rc

AGTAC SERVICES, LLC

A handwritten signature in black ink, appearing to read 'Derek Dibbens', written over a horizontal line.

Signature

Derek Dibbens

Print Name

Account Manager

Title (*Managing Member*)

316-833-6571

Telephone Number

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state, and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption. City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.
12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so

as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law ("protected class"), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor's failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state, and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet, or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
19. **Bankruptcy.** Contractor shall be considered to be in default of this Contract in the event Contractor (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by Contractor for the purpose of effecting any of the foregoing.

(Rev. 05/10/2022)

EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. This Agreement shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of: state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the general public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the general public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.



AGTAC Services, LLC
8200 Cody Drive, Suite F
Lincoln, NE 68512

October 18, 2022
20200244

Ladies and/or Gentlemen:

Please be advised that the City of Wichita hereby acknowledges receipt of notification and accepts the pricing change on January 1, 2023, for **Security Services for Public Parking Locations**.

LOCATION	HOURLY RATE	
	Security Officers	Security Supervisors
215 S. Market - Vehicle Patrol & Guard Patrol	\$19.47	\$19.47
121 S. Emporia - Vehicle Patrol & Guard Patrol	\$19.47	\$19.47
360 E. William – Vehicle Patrol & Guard Patrol	\$19.47	\$19.47
215 N. Mosley - Vehicle Patrol & Guard Patrol	\$19.47	\$19.47
325 N. Moore – Vehicle Patrol & Guard Patrol	\$19.47	\$19.47

Sincerely,

Chris Haislett for

Melinda A. Walker
Purchasing Manager

MAW/CH/rc

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council
SUBJECT: Payment for Settlement of Claim
INITIATED BY: Law Department
AGENDA: Consent

Recommendation: Authorize payment of \$262,500 as a full settlement of the claim and adopt the bonding resolution.

Background: This claim arises from a domestic violence incident involving Wichita Police officers on November 23, 2019.

Analysis: The claimants have offered to accept a lump sum payment of \$262,500 as full settlement of all claims against the officers and the City of Wichita. Due to the uncertainty and risk of an adverse judgment at trial, the Law Department recommends the settlement. The settlement of this claim does not constitute an admission of liability on the part of the City or the officers, rather, it is merely a settlement to resolve a disputed claim.

Financial Considerations: Funding for this settlement payment is available from the City's Self Insurance Fund. The Finance Department is directed to make any budget adjustments required and to issue any general obligation bonds, as necessary, to provide for payment of the approved settlement.

Legal Considerations: The Law Department recommends settlement of this claim for the amount of \$262,500. The bonding resolution has been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council authorize payment of \$262,500 as full settlement of all possible claims arising out of the event, which is the subject of this claim and adopt the bonding resolution, and authorize the necessary signatures.

Attachments: Bonding resolution.

RESOLUTION NO. 23-379

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA, KANSAS TO FUND A CIVIL LITIGATION SETTLEMENT.

WHEREAS, K.S.A. 75-6113 (the "Act") provides that payment of any judgments, compromises or settlements for which a municipality is liable pursuant to K.S.A. 75-6101 *et seq.*, and amendments thereto, may be made from any funds or monies of the municipality which lawfully may be utilized for such purpose or if the municipality is authorized by law to levy taxes upon property such payment may be made from monies received from the issuance of no-fund warrants, temporary notes or general obligation bonds, provided that warrants or temporary notes issued shall mature serially at such yearly dates as to be payable by not more than 10 tax levies and any bonds shall be issued in accordance with the provisions of the general bond law and shall be in addition to and not subject to any bonded debt limitation prescribed by any other law of the state of Kansas; and

WHEREAS, the City of Wichita, Kansas (the "City"), is a municipality within the meaning of the Act; and

WHEREAS, the governing body of the City has heretofore approved a certain Settlement Agreement relating to an incident occurring on November 23, 2019, involving City of Wichita police officers, under which Settlement Agreement the City is liable pursuant to K.S.A. 75-6101 *et seq.* to pay a settlement in the amount of \$262,500 and related expenses (the "Settlement"); and

WHEREAS, the governing body of the City of Wichita hereby finds and determines it to be necessary to authorize the issuance of general obligation bonds of the City to finance the Settlement and related costs.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Financing. The City is hereby authorized to issue general obligation bonds (the "Bonds") pursuant to the authority of the Act in an amount necessary to pay the costs of the Settlement, plus interest on interim financing and associated financing costs. Bonds may be issued to reimburse Settlement expenditures made on or after the date which is 60 days before the date of adoption of this Resolution, pursuant to Treasury Regulation §1.150-2.

SECTION 2. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the governing body of the City.

ADOPTED by the City Council of the City of Wichita, Kansas, on September 12, 2023.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

APPROVED AS TO FORM:

Jennifer Magaña
City Attorney and Director of Law

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: First Reading of the Bond Ordinance to Issue Multifamily Housing Revenue Bonds (Steele Shadybrook Estates) (District I)

INITIATED BY: City Manager's Office – Development Services

AGENDA: Consent

Recommendation: Place the bond ordinance on first reading and authorize the necessary signatures.

Background: On April 11, 2023, the City Council approved a Letter of Intent to issue Industrial Revenue Bonds (IRB) in an amount not to exceed \$9,000,000 for Steele Shadybrook Estates, LLC (Shadybrook). Shadybrook is acquiring and has a plan to renovate the Shadybrook Estates apartments located at 4925 Shadybrook Street, which is near 21st Street North and Oliver. The facility is a three-story, mid-rise apartment complex with 78 units for low-income elderly and disabled residents. The facility is in disrepair with extensive deferred maintenance issues.

Shadybrook is requesting the issuance of tax-exempt IRBs in an amount not-to-exceed \$9,000,000 to finance the costs to acquire and renovate the facility.

Shadybrook has been awarded 4% Low Income Housing Tax Credits, through the Kansas Housing Resources Corporation, which requires the use of IRBs for tax-exempt financing.

Analysis: Shadybrook Estates apartment complex was built in 1979 and is covered by a Section 8 Housing Assistance Payment (HAP) contract, which subsidizes the resident-paid portion of rent. As part of its acquisition of the property, Shadybrook intends to extend the HAP contract for an additional 20 years, which insures rental assistance for low-income residents.

This will be the fifth affordable housing project for Steele Properties, which is the parent company to Steele Shadybrook. The other projects include the Greenway Park Apartments in south Wichita, Almond Tree apartments in northwest Wichita and Somerset and Shadyway Plaza both in north Wichita.

Financial Considerations: FMSbonds, Inc. will underwrite the bonds. Shadybrook agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. Shadybrook is not requesting a property tax abatement in conjunction with the IRBs. The project will qualify for a sales tax exemption on bond-financed purchases.

Legal Considerations: The firm of Gilmore & Bell, P.C. serves as bond counsel in the transaction and has prepared bond documents needed for the issuance of bonds. All bond documents have been reviewed and approved by the Law Department.

Recommendations/Actions: It is recommended that the City Council place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not to exceed \$9,000,000 for Steele Shadybrook Estates, LLC and authorize the necessary signatures.

Attachments: Bond Ordinance

ORDINANCE NO. 52-261

**OF THE
CITY OF WICHITA, KANSAS**

**AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED \$9,000,000
MULTIFAMILY HOUSING REVENUE BONDS
SERIES VIII, 2023
(STEELE SHADYBROOK ESTATES LLC)**

ORDINANCE NO. 52-261

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES VIII, 2023 (STEELE SHADYBROOK ESTATES LLC) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A MULTIFAMILY APARTMENT COMPLEX; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS HAS FOUND AND DETERMINED:

A. The City of Wichita, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities.

B. The Issuer's governing body has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Multifamily Housing Revenue Bonds, Series VIII, 2023 (Steele Shadybrook Estates LLC) dated as of the date of issuance thereof in the aggregate principal amount not to exceed \$9,000,000 (the "Series VIII, 2023 Bonds"), for the purpose of paying the costs of acquiring, renovating and equipping an apartment complex located at 4925 Shadybrook Street in the City of Wichita, Kansas (the "Project"), as more fully described in the Trust Indenture, the Lease and in the Supplemental Agreement authorized in this Ordinance, for lease to Steele Shadybrook Estates LLC, a Kansas limited liability company (the "Tenant").

C. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series VIII, 2023 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

(i) a Trust Indenture dated as of September 1, 2023 (the "Indenture"), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series VIII, 2023 Bonds;

(ii) a Site Lease dated as of September 1, 2023 (the "Site Lease"), with the Tenant, under which the Issuer will lease the Land and the existing improvements thereon from the Tenant;

(iii) a Lease dated as of September 1, 2023 (the "Lease"), with the Tenant, under which the Issuer will acquire, construct, renovate and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments;

(iv) a Supplemental Agreement, dated as of September 1, 2023 (the "Supplemental Agreement"), between the Issuer and the Tenant, pursuant to which the Tenant will agree to certain provisions in connection with the issuance of the Bonds and the renovation of the Project;

(v) a Bond Purchase Agreement dated the date of issuance of the Bonds (the "Bond Purchase Agreement") providing for the sale of the Series VIII, 2023 Bonds by the Issuer to FMSbonds, Inc. (the "Purchaser");

(vi) a Tax Compliance Agreement dated as of September 1, 2023 among the Issuer, the Tenant and the Trustee;

(vii) a Land Use Restriction Agreement dated as of September 1, 2023 among the Issuer, the Tenant and the Trustee; and

(viii) a Consent and Joinder to Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of September 1, 2023, executed by the Issuer and attached to the Fee and Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing executed by the Tenant.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined in this Ordinance will have the meanings set forth in the Trust Indenture and the Lease.

Section 2. **Authority to Cause the Project to Be Purchased, Renovated and Equipped.** The Issuer is authorized to cause the Project to be acquired, constructed, renovated and equipped in the manner described in the Trust Indenture and the Lease.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series VIII, 2023 Bonds, to be designated "City of Wichita Kansas Multifamily Housing Revenue Bonds, Series VIII, 2023 (Steele Shadybrook Estates LLC)" in the aggregate principal amount of not to exceed \$9,000,000, for the purpose of providing funds to pay the costs of the Project. The Series VIII, 2023 Bonds will be in such principal amount, will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Trust Indenture. The Series VIII, 2023 Bonds will be special limited obligations of the Issuer payable solely from the Security under the Indenture, including revenues derived from the Lease of the Project. The Series VIII, 2023 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Security described in the Indenture to the Trustee for the benefit of the owners of the Series VIII, 2023 Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project.** The Issuer will lease the real property and existing improvements from the Tenant pursuant to the Site Lease, and the Issuer will acquire, construct, renovate and equip the Project and lease it back to the Tenant according to the provisions of the Lease in the form approved in this Ordinance.

Section 6. **Authorization of Supplemental Agreement.** The Issuer is authorized to enter into the Supplemental Agreement with the Tenant in the form approved in this Ordinance.

Section 7. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series VIII, 2023 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 8. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series VIII, 2023 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Trust Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series VIII, 2023 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 9. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges its interest in the Project and the net rentals generated under the Lease to the payment of the Series VIII, 2023 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series VIII, 2023 Bonds are paid or deemed to have been paid under the Indenture.

Section 10. **Authority To Correct Errors, Etc.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 11. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series VIII, 2023 Bonds and the Bond Documents.

Section 12. **Effective Date.** This Ordinance shall take effect after its final passage by the governing body of the Issuer and publication once in the Issuer's official newspaper.

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PASSED by the governing body of the Issuer on September 19, 2023.

(SEAL)

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM ONLY.

Jennifer Magaña, Director of Law and
City Attorney

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CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 52-261 of the City of Wichita, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON SEPTEMBER 12, 2023**

The governing body of the City of Wichita, Kansas met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, there was presented for first reading on the governing body's consent agenda an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES VIII, 2023 (STEELE SHADYBROOK ESTATES LLC) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A MULTIFAMILY APARTMENT COMPLEX; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, _____ moved that the consent agenda be passed. The motion was seconded by _____. The motion that the consent agenda be passed, including passage upon first reading of said Ordinance, was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay: NONE

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Wichita, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON SEPTEMBER 19, 2023**

The governing body of the City of Wichita, Kansas met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, there was presented for second reading on the governing body's consent agenda an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES VIII, 2023 (STEELE SHADYBROOK ESTATES LLC) FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A MULTIFAMILY APARTMENT COMPLEX; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, _____ moved that the consent agenda be passed. The motion was seconded by _____. The motion that the consent agenda be passed, including final passage of said Ordinance, was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Ordinance was then duly numbered Ordinance No. 52-261, was signed by the Mayor and attested by the Clerk, and the Ordinance was directed to be published one time in the official newspaper of the City.

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Wichita, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

City Clerk

City of Wichita
City Council Meeting
September 12, 2023

TO: Mayor and City Council

SUBJECT: First Reading of the Bond Ordinance to Issue Industrial Revenue Bonds (McAsey Investments, LLC/Wichita Machine Products) (District IV)

INITIATED BY: City Manager's Office – Development Services

AGENDA: Consent

Recommendation: Place the bond ordinance on first reading and authorize the necessary signatures.

Background: On July 1, 2022, the City Council approved a Letter of Intent to issue Industrial Revenue Bonds (IRB) in an amount not to exceed \$2,500,000 for Wichita Machine Products, Inc. Bond proceeds were used to acquire land and construct an 18,750 square-foot manufacturing and office building at the southeast corner of 47th Street South and West Street. The owner of Wichita Machine Products, Jeremy McAsey, owns the facility through a real estate holding entity, McAsey Investments, LLC which is wholly owned by Jeremy McAsey. McAsey Investments will lease the facility to Wichita Machine Products.

Wichita Machine Products is requesting the issuance of IRBs in an amount not to exceed \$2,500,000 and a 90% property tax abatement on a five-plus-five-year basis.

Analysis: Wichita Machine Products currently employs 11 people in Wichita and projects that it will add six new employees over the next five years at an average annual wage of \$54,000 per year.

Wichita Machine Products qualifies for a 30% tax abatement based on job creation (six jobs), 40% based on capital investment (\$2,500,000), 10% for being in a Regional Growth Plan sector (advanced manufacturing) and an additional 10% for using State of Kansas incentives for a total abatement of 90%.

Financial Considerations: Wichita Machine Products agrees to pay all costs of the City relative to the issuance of the bonds. The company also agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds.

Legal Considerations: The firm of Gilmore & Bell, P.C. serves as bond counsel in the transaction and has prepared bond documents needed for the issuance of bonds. All bond documents have been reviewed and approved by the Law Department.

Recommendations/Actions: It is recommended that the City Council place on first reading the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Industrial Revenue Bonds in an amount not to exceed \$2,500,000 for McAsey Investments, LLC/Wichita Machine Products and authorize the necessary signatures.

Attachments: Bond Ordinance

ORDINANCE NO. 52-262

**OF THE
CITY OF WICHITA, KANSAS**

**AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED \$2,500,000
TAXABLE INDUSTRIAL REVENUE BONDS
SERIES III, 2023
(WICHITA MACHINE PRODUCTS PROJECT)**

ORDINANCE NO. 52-262

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES III, 2023 (WICHITA MACHINE PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY; AND AUTHORIZING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS HAS FOUND AND DETERMINED:

A. The City of Wichita, Kansas (the "Issuer") is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, and to issue revenue bonds for the purpose of paying the costs of such facilities.

B. The City Council of the Issuer (the "Governing Body") has determined that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds, Series III, 2023 (Wichita Machine Products Project) in the aggregate principal amount not to exceed \$2,500,000 (the "Series III, 2023 Bonds"), for the purpose of paying the costs of the acquisition, construction and equipping of a manufacturing facility (the "Project") as more fully described in the Indenture and in the Project Lease authorized in this Ordinance, for lease to McAsey Investments LLC, a Kansas limited liability company (the "Tenant") for sublease to Wichita Machine Products Inc., a Kansas corporation (the "Subtenant").

C. The Governing Body finds that it is necessary and desirable in connection with the issuance of the Series III, 2023 Bonds to execute and deliver the following documents (collectively, the "Bond Documents"):

- (i) a Trust Indenture dated as of September 1, 2023 (the "Indenture"), with Security Bank of Kansas City, Kansas City, Kansas, as Trustee (the "Trustee"), prescribing the terms and conditions of issuing and securing the Series III, 2023 Bonds;
- (ii) a Site Lease dated as of September 1, 2023 (the "Site Lease") with the Tenant, under which the Tenant will lease the Project to the Issuer;
- (iii) a Project Lease dated as of September 1, 2023 (the "Project Lease"), with the Tenant, under which the Issuer will acquire, construct and equip the Project and lease it to the Tenant in consideration of Basic Rent and other payments;
- (iv) a Bond Purchase Agreement (the "Bond Purchase Agreement") providing for the sale of the Series III, 2023 Bonds by the Issuer to McAsey Investments LLC (the "Purchaser"); and
- (v) an Agreement for Payment in Lieu of Taxes with the Tenant, under which the Tenant will make payments in lieu of taxes for each year after issuance of the Series III, 2023 Bonds that the Project is exempt from ad valorem taxation.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined in this Ordinance will have the meanings set forth in the Indenture and the Project Lease.

Section 2. **Authority to Cause the Project to Be Purchased and Constructed.** The Issuer is authorized to cause the Project to be acquired, constructed and equipped in the manner described in the Indenture, the Site Lease and the Project Lease.

Section 3. **Authorization of and Security for the Bonds.** The Issuer is authorized and directed to issue the Series III, 2023 Bonds, to be designated "City of Wichita Kansas Taxable Industrial Revenue Bonds, Series III, 2023 (Wichita Machine Products Project)" in the aggregate principal amount not to exceed \$2,500,000, for the purpose of providing funds to pay the costs of the Project. The Series III, 2023 Bonds will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Indenture. The Series III, 2023 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Indenture, including revenues derived from the Project Lease of the Project. The Series III, 2023 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer, and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Indenture to the Trustee for the benefit of the owners of the Series III, 2023 Bonds on the terms and conditions in the Indenture.

Section 5. **Lease of the Project.** The Tenant will enter into the Site Lease of the Project to the Issuer, and the Issuer will lease its interest in the Project to the Tenant pursuant to Project Lease. The form of the Site Lease and Project Lease are approved in this Ordinance. The proposed sublease of the Project to the Subtenant) is approved by the Issuer.

Section 6. **Authorization of Bond Purchase Agreement.** The Issuer is authorized to sell the Series III, 2023 Bonds to the Purchaser, according to the terms and provisions of the Bond Purchase Agreement, in the form approved in this Ordinance.

Section 7. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series III, 2023 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to final passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series III, 2023 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 8. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project and the net rentals generated under the Project Lease to the payment of the Series III, 2023 Bonds in

accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series III, 2023 Bonds are paid or deemed to have been paid under the Indenture.

Section 9. **Authority To Correct Errors, Etc.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of the instruments or to the provisions of this Ordinance.

Section 10. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series III, 2023 Bonds and the Bond Documents.

Section 11. **Effective Date.** This Ordinance shall take effect after its final passage by the governing body of the Issuer and publication once in the Issuer's official newspaper.

[BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY]

PASSED by the governing body of the Issuer on September 19, 2023.

(SEAL)

Brandon J. Whipple, Mayor

ATTEST:

Jamie Buster, City Clerk

APPROVED AS TO FORM ONLY.

Jennifer Magaña, Director of Law and
City Attorney

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CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 52-262 of the City of Wichita, Kansas duly passed by the Governing Body, signed by the Mayor and published in the official City newspaper on the date stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

Jamie Buster, City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON SEPTEMBER 12, 2023**

The governing body of the City of Wichita, Kansas met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, there was presented for first reading on the governing body's consent agenda an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES III, 2023 (WICHITA MACHINE PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY; AND AUTHORIZING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Councilmember _____ moved that the consent agenda be passed. The motion was seconded by Councilmember _____. The motion that the consent agenda be passed, including approval upon first reading of the Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Wichita, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF WICHITA, KANSAS
HELD ON SEPTEMBER 19, 2023**

The governing body of the City of Wichita, Kansas met in regular session at the usual meeting place in the City, at 9:00 a.m., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, there was presented for second reading on the governing body's consent agenda an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES III, 2023 (WICHITA MACHINE PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY; AND AUTHORIZING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Councilmember _____ moved that the consent agenda be passed. The motion was seconded by Councilmember _____. The motion that the consent agenda be passed, including final passage of the Ordinance, was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Ordinance was then duly numbered Ordinance No. 52-262, was signed by the Mayor and attested by the Clerk, and the Ordinance was directed to be published one time in the official newspaper of the City.

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Wichita, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

Jamie Buster, City Clerk

(Published in *The Wichita Eagle* on September 22, 2023)

SUMMARY OF ORDINANCE NO. 52-262

On September 19, 2023, the governing body of the City of Wichita, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF WICHITA, KANSAS TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS, SERIES III, 2023 (WICHITA MACHINE PRODUCTS PROJECT) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MANUFACTURING FACILITY; AND AUTHORIZING OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The Ordinance authorizes the Issuer to issue its Taxable Industrial Revenue Bonds, Series III, 2023 (Wichita Machine Products Project) in the aggregate principal amount not to exceed \$2,500,000 (the “Series III, 2023 Bonds”), for the purpose of paying the costs of the acquisition, construction and equipping of a manufacturing facility (the “Project”), as more fully described in the Indenture, the Site Lease and the Project Lease authorized by the Ordinance. The Project will be leased by the Issuer to McAsey Investments LLC, a Kansas limited liability company. In connection with the issuance of the Series III, 2023 Bonds, the Issuer approves a ten-year exemption from ad valorem property taxes for the Project, subject to payments in lieu of taxes.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 13th Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at <https://www.wichita.gov/CityClerk/Pages/Ordinances.aspx>.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: September 19, 2023

Jennifer Magaña, Director of Law
and City Attorney

SECOND READING ORDINANCES FOR September 12, 2023 (FIRST READ September 5, 2023)

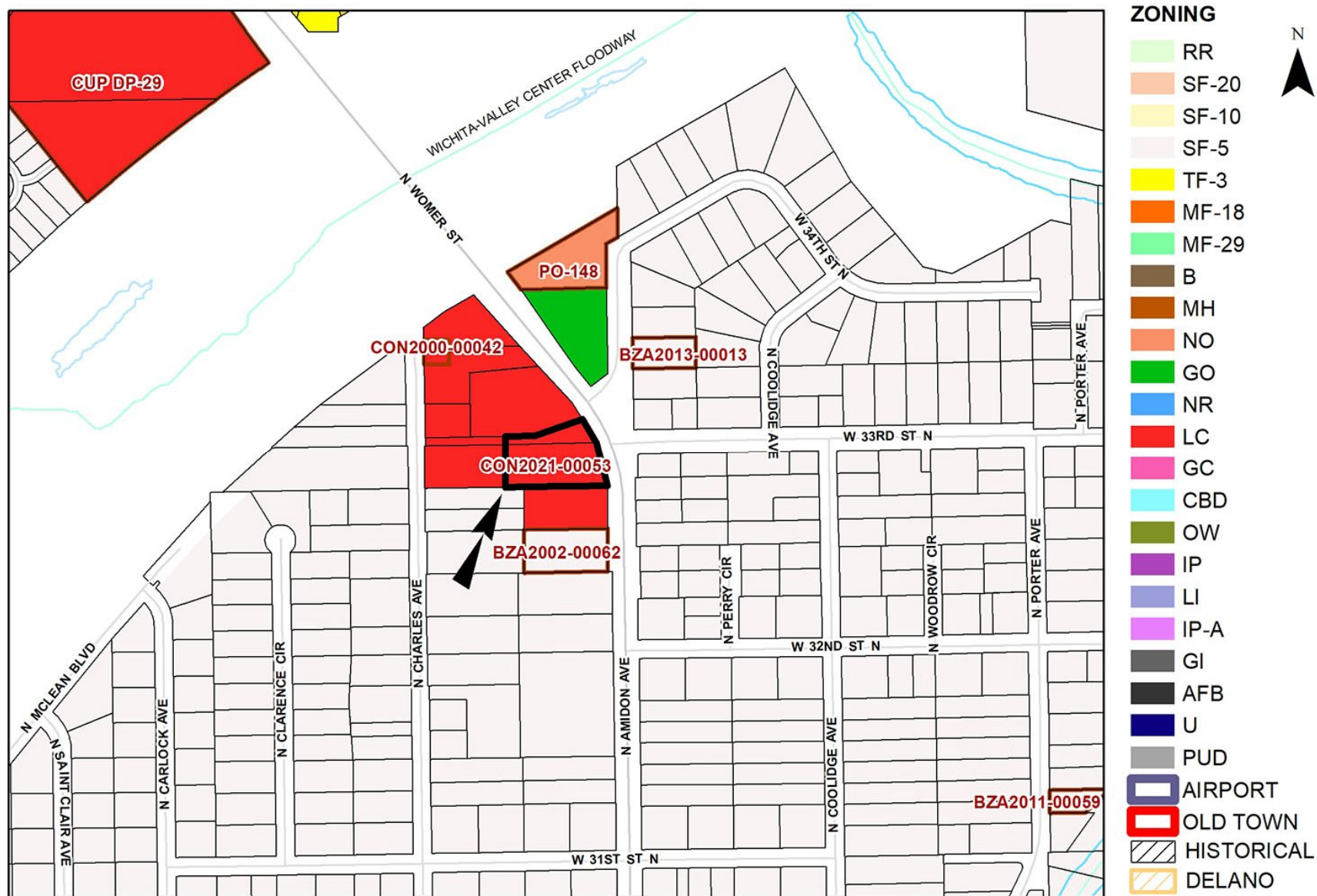
a. ORDINANCE NO. 52-257

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

b. ORDINANCE NO. 52-258








AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS.







2035 Wichita Future Growth Concept Map

Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

Statistical Development Areas

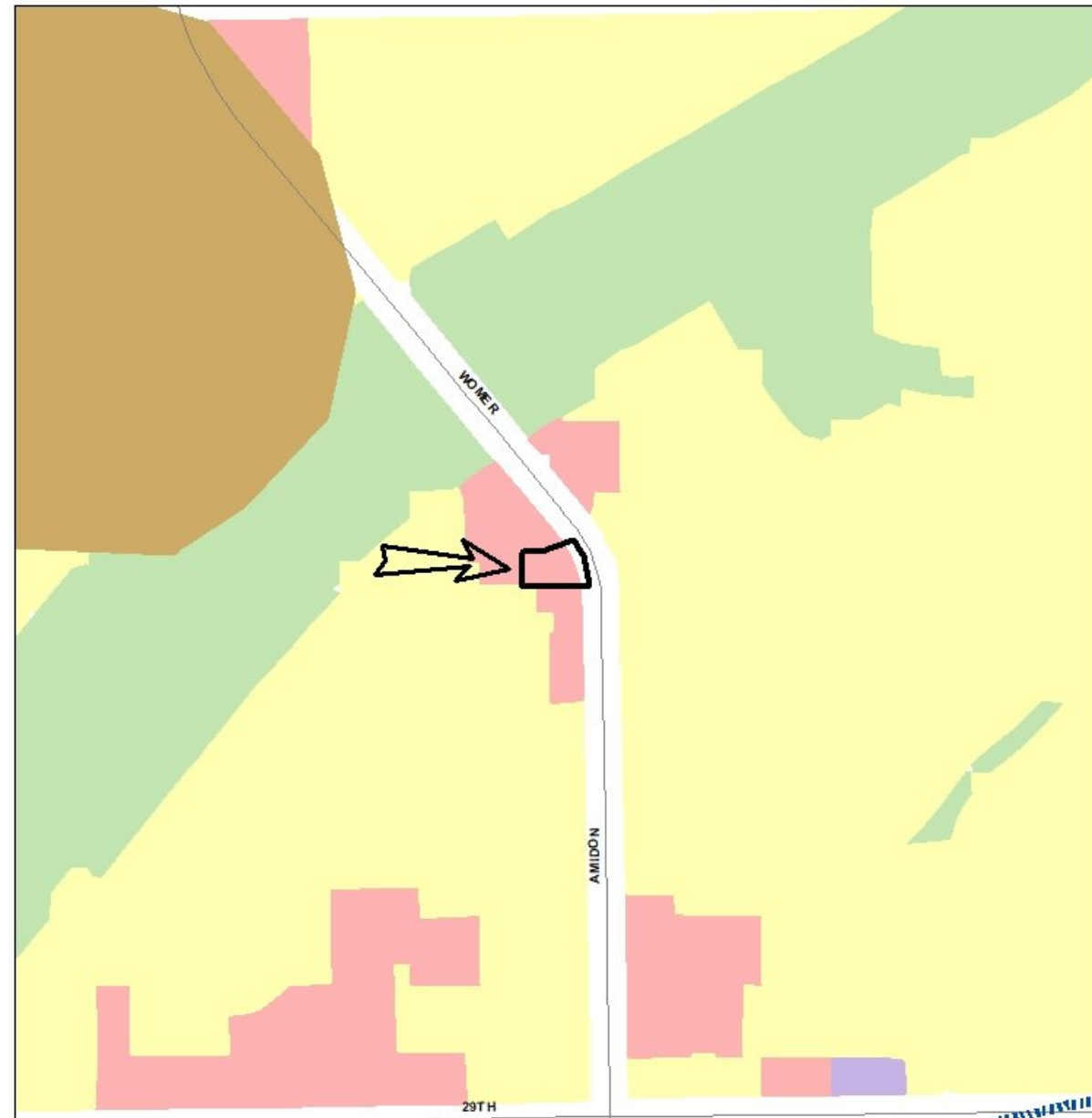
-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Nghbd_Plan_Areas



For more information on this document, please visit the City of Wichita website at www.wichita.gov. This document is intended to provide a general overview of the future growth concept map and is not intended to be used for legal purposes. The City of Wichita reserves the right to modify or update this document at any time without notice.



Looking west towards site



Looking east away from site



Looking west away from site



Looking north away from site



Looking south away from site



Looking north towards site



METROPOLITAN AREA PLANNING COMMISSION MINUTES

AUGUST 10, 2023

4.3 ZON2023-00042: Zone change request in the City from LC Limited Commercial District to GC General Commercial District to allow for future development; generally located on the southwest corner of North Amidon Avenue and West 33rd Street North (3357 North Amidon Avenue).

The North 2 Acres of Lot 12, EXCEPT the West 260 feet thereof, Russell Tracts Addition, Sedgwick County, Kansas.

AND

The South 132 feet of the East 630 feet of the Northwest Quarter, Section 31, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT the South 25 feet of the West 260 feet thereof; AND EXCEPT that part platted as Amidon Acres Addition.

BACKGROUND: The applicant is requesting a zone change from LC Limited Commercial District to GC General Commercial District. The 1.23-acre property is located on the west side of North Amidon Avenue, within one-quarter mile south of West 37th Street North (3357 North Amidon Avenue). The subject site is currently developed with an auto dealership.

The applicant has not specified the intended use for the site. General Commercial District permits more uses than Limited Commercial District. Some of the permitted uses include:

Auditorium or Stadium, Microbrewery, Manufacturing (General), Recycling Processing Center, Riding Academy or Stable, Rodeo in the City, Sexually Oriented Business in the City, Research Services, Storage (Outdoor, as a Principal Use), Tattooing and Body Piercing Facility, Vehicle Repair (General), Vehicle Storage Yard, Warehousing, Welding or Machine Shop, Wholesale or Business Services.

In addition, Animal Care (General), Kennel (Hobby or Boarding/Breeding/Training), Manufacturing (Limited), Mobile Food Unit in the City, Monument Sales, Printing and Publishing (General), Recreation and Entertainment (Outdoor), Recreational Vehicle Campground, Vehicle and Equipment Sales (Outdoor), and Warehouse (Self-Service Storage) are permitted by-right GC General Commercial but only permitted in LC Limited Commercial with a Conditional Use. Gas and/or Fuel Storage and Sales is allowed by Conditional Use in GC General Commercial District and not permitted in LC Limited Commercial District.

The requested zone change would generally allow a reduction in setbacks. There will be no changes to minimum lot area or width, front and interior side setback requirements, or maximum height.

Development Standard	LC Limited Commercial District	GC General Commercial District
Minimum lot area	2,500 square feet for Single-Family; 2,000 square feet per Dwelling Unit for Duplex; 580 square feet per Dwelling Unit for Multi-Family (maximum 75.1 Dwelling Units per acre); no minimum for nonresidential uses	2,500 square feet for Single-Family; 2,000 square feet per Dwelling Unit for Duplex; 580 square feet per Dwelling Unit for Multi-Family (maximum 75.1 Dwelling Units per acre); no minimum for nonresidential uses
Minimum lot width	No minimum	No minimum
Front setback	20 feet	20 feet
Rear setback	10 feet	No minimum
Interior side setback	Zero feet or 5 feet	Zero feet or 5 feet
Street side setback	10 feet	No minimum
Maximum height	80 feet	80 feet

There will be no changes to the existing screening and landscaping requirements set forth in the Unified Zoning Code and Wichita Landscape Code, respectively. The requested zone change will also not have an effect on the compatibility height or setback standards that apply to this property when abutting residential zoning.

Because the subject property abuts residential zoning, staff is recommending a Protective Overlay that restricts the permitted uses and signage on the properties. The applicant does not have a specific intended use for the property but would like to expand upon existing uses. The uses outlined in the Protective Overlay take nearby residential zoning into consideration and restrict intense uses that may detrimentally affect nearby properties.

Properties to the north are zoned LC Limited Commercial District and developed with a general store. Property to the northeast is zoned GO General Office District and is developed with a medical office. Property to the south is zoned LC Limited Commercial District and is developed with single-family dwellings. Properties to the east, across North Amidon Avenue, are zoned SF-5 Single-Family Residential District and are developed with single-family dwellings. Properties to the west, on North Charles Avenue, are zoned LC Limited Commercial District and are developed with single-family dwellings.

CASE HISTORY: The northern half of the property is unplatted. Platting will be required prior to the issuance of building permits. On March 22, 1911, the southern half of the property was platted as Lot 12 in the Russell Tracts Addition. In 2004, the applicant requested a zone change from LC Limited Commercial District to OW Office Warehouse District, subject to Protective Overlay #143. However, this application was later voided (ZON2004-00029). A lot split was required within one year of approval from the final governing body, as a condition of approval, and that condition was not met. On December 17, 2021, the Metropolitan Area Planning Commission approved a Conditional Use for Vehicle and Equipment Sales, Outdoor on the site (CON2021-00053).

ADJACENT ZONING AND LAND USE:

NORTH:	LC	General store
NORTHEAST:	GO	Medical office
SOUTH:	LC	Single-family dwellings
EAST:	SF-5	Single-family dwellings
WEST:	LC, SF-5	Single-family dwelling

PUBLIC SERVICES: The subject site currently has access to North Amidon Avenue, which is a four-lane arterial street with sidewalks on each side. Municipal services, such as water, sanitary sewer and stormwater services, already exist on site. Wichita Transit serves this area within one-half mile south of the subject site, on the southwest corner of West 29th Street North and North Amidon Avenue.

CONFORMANCE TO PLANS/POLICIES: The requested zone change is in partial conformance with the *Community Investments Plan*. The *Community Investments Plan* (the Wichita-Sedgwick County Comprehensive Plan), which includes the 2035 Future Growth Concept Map, recommends the subject site as appropriate for “Commercial” uses. The *Plan* defines “Commercial” as “*areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality. Convenience retail, restaurants, small offices, and personal service uses are located in close proximity to, and potentially mixed with, Residential Uses.*”

The Land Use Compatibility Guidelines of the *Community Investments Plan* state that “Higher-intensity development should be discouraged from locating in areas of existing lower-intensity development, particularly established low-density residential areas; industrial and major commercial land uses that

generate pollution, odor, noise, light, safety hazards, and high levels of traffic should be located away from residential areas and developed with screening, buffering, and site design features sufficient to mitigate adverse impacts.” The subject site is adjacent to residential zoning and low-density residential properties on its south, east, and west sides. The Protective Overlay restricts the more intense uses associated with GC General Commercial District on the property, and the site will adhere to the Wichita Landscape Code and UZC screening requirements to mitigate new uses on the property.

The requested zone change is in conformance with the *Wichita: Places for People Plan*. The subject site is located within an Area of Stability, which the *Plan* defines as “locations within the Established Central Area (ECA) that exhibit less stress, or fewer economic, connectivity and accessibility issues than the Areas of Opportunity. Areas of Stability require fewer interventions and potentially less public investment to maintain a stable development environment and community. Improvements should be targeted to support development momentum and strengthen the established physical context.”

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to Protective Overlay #419, which reads:

1. The property is restricted to all uses permitted in the LC Limited Commercial District zoning, in addition to, the following uses as permitted in GC General Commercial District: Vehicle Storage Yard and Vehicle and Equipment Sales (Outdoor).
2. Vehicle and Equipment Sales (Outdoor) shall remain subject to the Supplementary Use Regulations defined in Sec. III-D.6.x of the Unified Zoning Code according to LC Limited Commercial District standards. This supersedes the conditions outlined in CON2021-00053.
3. Parking shall be provided in accordance with Article IV of the Unified Zoning Code.
4. Signs shall be in accordance with the LC Limited Commercial District in the Sign Code of the City of Wichita, with the following additional requirements:
 - a. Portable signs are not allowed.
 - b. Ground signs shall be monument type.
 - c. No off-site/billboard signs.
 - d. No illuminated building signs on the south, east, or west elevations.
5. Property shall install similar or consistent parking lot lighting elements (i.e., fixtures, poles, and lamps, and etc.).
6. The height of all light poles, including pole base, is limited to 15 feet.
7. All exterior lighting shall be shielded to direct light disbursement in a downward direction and away from residential areas.
8. Landscape buffers and screening shall be in accordance with the City of Wichita Landscape Code.
9. No outdoor speaker systems shall be permitted.
10. All rooftop mechanical equipment shall be screened from ground-level view from adjacent residential areas and adjacent street right of way.
11. Trash receptacles and ground level mechanical equipment shall be screened to reasonably hide them from ground level view, adjacent property and street right of way.
12. If used for Vehicle Storage Yard, the following restrictions shall apply:
 - a. Use: the vehicle storage yard shall be used for the storage of operable vehicles only, and in no case shall it be used for dismantling of any vehicle or equipment.
 - b. Paving: the storage area and all entrance/exit drives on private property shall be surfaced with asphalt, concrete or surfacing as required by the Unified Zoning Code and shall be maintained in good condition and free of weeds, trash, and other debris.
13. Any changes in uses on-site shall require an amendment to the Protective Overlay.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the neighborhood is mixed use. Properties to the north of the subject sites are zoned LC Limited Commercial District and are currently undeveloped. Property to the northeast is zoned GO General Office District and is developed with a medical office. Properties to the south are zoned LC Limited Commercial District and SF-5 Single-Family Residential District and are developed with single-family dwellings. Properties to the east, across North Amidon Avenue, are zoned SF-5 Single-Family Residential District and are developed with single-family dwellings. Properties to the west, on North Charles Avenue, are zoned LC Limited Commercial District and SF-5 Single-Family Residential District and developed with single-family dwellings.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is presently zoned LC Limited Commercial District, which is suitable for a limited number of commercial, residential, public, and civic uses.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Staff does not anticipate the removal of restrictions to have a significant detrimental impact on nearby property. The Protective Overlay should mitigate potential impacts associated with GC General Commercial District zoning, such as light pollution and odor.
4. **Length of time subject property has remained vacant as zoned:** The property has been developed with a commercial building since 1960.
5. **Relative gain to public health, safety, and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval would permit new development in an area that is appropriate for such development. Denial may represent a loss of economic opportunity for the applicant.
6. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The requested zoning would continue to allow the property to be in conformance with the *Community Investments Plan* and the *Wichita: Places for People Plan*, as discussed in the staff report.
7. **Impact of the proposed development on community facilities:** The Planning Department does not anticipate the requested zone change will have a significant impact on community facilities.
8. **Opposition or support of neighborhood residents:** At the time the staff report was prepared, staff received three phone calls in opposition to the requested zone change.

MOTION: To approve subject to staff recommendation.

HARTMAN moved, **GREENE** seconded the motion, and it carried (11-0).



Interoffice Memorandum

To: City Council
From: Ana Lopez
Subject: ZON2023-00042
Date: August 29, 2023

The Metropolitan Area Planning Department presented this case for consideration by the District 6 Advisory Board.

The applicant is requesting a zone change from LC Limited Commercial District to GC General Commercial District. The 1.23-acre property is located on the west side of North Amidon Avenue, within one-quarter mile south of West 37th Street North (3357 North Amidon Avenue). The subject site is currently developed with an auto dealership.

The applicant has not specified the intended use for the site. General Commercial District permits more uses than Limited Commercial District. Some of the permitted uses include:

Auditorium or Stadium, Microbrewery, Manufacturing (General), Recycling Processing Center, Riding Academy or Stable, Rodeo in the City, Sexually Oriented Business in the City, Research Services, Storage (Outdoor, as a Principal Use), Tattooing and Body Piercing Facility, Vehicle Repair (General), Vehicle Storage Yard, Warehousing, Welding or Machine Shop, Wholesale or Business Services.

In addition, Animal Care (General), Kennel (Hobby or Boarding/Breeding/Training), Manufacturing (Limited), Mobile Food Unit in the City, Monument Sales, Printing and Publishing (General), Recreation and Entertainment (Outdoor), Recreational Vehicle Campground, Vehicle and Equipment Sales (Outdoor), and Warehouse (Self-Service Storage) are permitted by-right GC General Commercial but only permitted in LC Limited Commercial with a Conditional Use. Gas and/or Fuel Storage and Sales is allowed by Conditional Use in GC General Commercial District and not permitted in LC Limited Commercial District.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to Protective Overlay #419, which reads:

1. The property is restricted to all uses permitted in the LC Limited Commercial District zoning, in addition to, the following uses as permitted in GC General Commercial District: Vehicle Storage Yard and Vehicle and Equipment Sales (Outdoor).

2. Vehicle and Equipment Sales (Outdoor) shall remain subject to the Supplementary Use Regulations defined in Sec. III-D.6.x of the Unified Zoning Code according to LC Limited Commercial District standards. This supersedes the conditions outlined in CON2021-00053.
3. Parking shall be provided in accordance with Article IV of the Unified Zoning Code.
4. Signs shall be in accordance with the LC Limited Commercial District in the Sign Code of the City of Wichita, with the following additional requirements:
 - a. Portable signs are not allowed.
 - b. Ground signs shall be monument type.
 - c. No off-site/billboard signs.
 - d. No illuminated building signs on the south, east, or west elevations.
5. Property shall install similar or consistent parking lot lighting elements (i.e., fixtures, poles, and lamps, and etc.).
6. The height of all light poles, including pole base, is limited to 15 feet.
7. All exterior lighting shall be shielded to direct light disbursement in a downward direction and away from residential areas.
8. Landscape buffers and screening shall be in accordance with the City of Wichita Landscape Code.
9. No outdoor speaker systems shall be permitted.
10. All rooftop mechanical equipment shall be screened from ground-level view from adjacent residential areas and adjacent street right of way.
11. Trash receptacles and ground level mechanical equipment shall be screened to reasonably hide them from ground level view, adjacent property and street right of way.
12. If used for Vehicle Storage Yard, the following restrictions shall apply:
 - a. Use: the vehicle storage yard shall be used for the storage of operable vehicles only, and in no case shall it be used for dismantling of any vehicle or equipment.
 - b. Paving: the storage area and all entrance/exit drives on private property shall be surfaced with asphalt, concrete or surfacing as required by the Unified Zoning Code and shall be maintained in good condition and free of weeds, trash, and other debris.
13. Any changes in uses on-site shall require an amendment to the Protective Overlay.

The DAB heard the request so that adjacent property owners and Wichita residents had an opportunity to express their concerns. After the presentation by MAPD, DAB and members of made the following comments:

DAB (C): My biggest concern is traffic patterns and the range of options allowed uses under the zoning conditions.

Staff (A): The recommendation is subject to a protective overlay. Without the protect overlay, the property could be used for warehouse and self-storage, RV campground.

Applicant (C): The original intent to filing the general commercial was to kindly ease the restrictions on the conditional use. Selling a boat or a motorcycle was not allowed. Another big thing right now that is still restricted is the ability to park on gravel.

DAB (C): There was a refence in the staff report about received phone calls from residents in the area.

Staff (A): We simple note if we receive phone calls or feedback in writing from residents.

Public (C): The property is well maintained. I do understand that concrete paving is going to be expensive but there is a good environmental reason. Gravel would make it difficult to clean up oil leaks. Signage should be limited and allowed as an amendment.

Public (C): The applicant is doing a good job at keeping the area well maintained.

No further questions from the public or agent, the discussion returned to the DAB for a motion.

Action Taken: Lisa Tatum made a motion to **APPROVE** staff's recommendation. The motion was seconded by Tom James.

MOTION APPROVED 6-0

Respectfully submitted,

Ana Lopez
Community Services Representative
District 6

ORDINANCE NO. 52-263

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2023-00042

Zone change request in the City from LC Limited Commercial District to GC General Commercial District zoning subject to the provisions of Protective Overlay #419, on property legally described as:

The North 2 acres of Lot 12, EXCEPT the West 260 feet thereof, Russell Tracts Addition, Sedgwick County, Kansas.

AND

Beginning at the Southeast Corner of the Amidon Acres Addition (30016498 +/- 87 feet Southeasterly; thence West +/- 292 feet; thence North +/- 26 feet; thence East +/- 92 feet; thence Northeasterly +/- 162.29 feet to Point of Beginning in Section 31, Township 26 South, Range 1 East of the 6th P.M. in Wichita, Sedgwick County, Kansas.

Protective Overlay #419

1. The property is restricted to all uses permitted in the LC Limited Commercial District zoning, in addition to, the following uses as permitted in GC General Commercial District: Vehicle Storage Yard and Vehicle and Equipment Sales (Outdoor).
2. Vehicle and Equipment Sales (Outdoor) shall remain subject to the Supplementary Use Regulations defined in Sec. III-D.6.x of the Unified Zoning Code according to LC Limited Commercial District standards. This supersedes the conditions outlined in CON2021-00053.
3. Parking shall be provided in accordance with Article IV of the Unified Zoning Code.
4. Signs shall be in accordance with the LC Limited Commercial District in the Sign Code of the City of Wichita, with the following additional requirements:
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 - c. No off-site/billboard signs.
 - d. No illuminated building signs on the south, east, or west elevations.
5. Property shall install similar or consistent parking lot lighting elements (i.e., fixtures, poles, and lamps, and etc.).
6. The height of all light poles, including pole base, is limited to 15 feet.
7. All exterior lighting shall be shielded to direct light disbursement in a downward direction and away from residential areas.
8. Landscape buffers and screening shall be in accordance with the City of Wichita Landscape Code.
9. No outdoor speaker systems shall be permitted.
10. All rooftop mechanical equipment shall be screened from ground-level view from adjacent residential areas and adjacent street right of way.

11. Trash receptacles and ground level mechanical equipment shall be screened to reasonably hide them from ground level view, adjacent property and street right of way.
12. If used for Vehicle Storage Yard, the following restrictions shall apply:
 - a. Use: the vehicle storage yard shall be used for the storage of operable vehicles only, and in no case shall it be used for dismantling of any vehicle or equipment.
 - b. Paving: the storage area and all entrance/exit drives on private property shall be surfaced with asphalt, concrete or surfacing as required by the Unified Zoning Code and shall be maintained in good condition and free of weeds, trash, and other debris.
13. Any changes in uses on-site shall require an amendment to the Protective Overlay.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

Adopted this 19th day of September 2023.

Brandon J. Whipple, Mayor, City of Wichita

ATTEST:

Jamie Buster, City Clerk

(SEAL)

Approved as to form: _____
Jennifer Magaña, City Attorney and Director of Law

Background: The applicant is requesting a zone change from LC Limited Commercial District to GC General Commercial District. The 1.23-acre property is located on the west side of North Amidon Avenue, within one-quarter mile south of West 37th Street North (3357 North Amidon Avenue). The subject site is currently developed with an auto dealership.

The applicant has not specified the intended use for the site. GC General Commercial District permits more uses than LC Limited Commercial District. Some of the permitted uses include:

Auditorium or Stadium, Microbrewery; Manufacturing (General); Recycling Processing Center, Riding Academy or Stable; Rodeo in the City; Sexually Oriented Business in the City; Research Services, Storage (Outdoor, as a Principal Use); Tattooing and Body Piercing Facility; Vehicle Repair (General); Vehicle Storage Yard, Warehousing; Welding or Machine Shop; and Wholesale or Business Services.

In addition, Animal Care (General), Kennel (Hobby or Boarding/Breeding/Training), Manufacturing (Limited), Mobile Food Unit in the City, Monument Sales, Printing and Publishing (General), Recreation and Entertainment (Outdoor), Recreational Vehicle Campground, Vehicle and Equipment Sales (Outdoor), and Warehouse (Self-Service Storage) are permitted by-right GC General Commercial District but only permitted in LC Limited Commercial District with a Conditional Use. Gas and/or Fuel Storage and Sales is allowed by Conditional Use in GC General Commercial District and not permitted in LC Limited Commercial District.

The requested zone change would generally allow a reduction in setbacks. There will be no changes to minimum lot area or width, front and interior side setback requirements, or maximum height.

Development Standard	LC Limited Commercial District	GC General Commercial District
Minimum lot area	2,500 square feet for Single-Family; 2,000 square feet per Dwelling Unit for Duplex; 580 square feet per Dwelling Unit for Multi-Family (maximum 75.1 Dwelling Units per acre); no minimum for nonresidential uses	2,500 square feet for Single-Family; 2,000 square feet per Dwelling Unit for Duplex; 580 square feet per Dwelling Unit for Multi-Family (maximum 75.1 Dwelling Units per acre); no minimum for nonresidential uses
Minimum lot width	No minimum	No minimum
Front setback	20 feet	20 feet
Rear setback	10 feet	No minimum
Interior side setback	Zero feet or five feet	Zero feet or five feet
Street side setback	10 feet	No minimum
Maximum height	80 feet	80 feet

There will be no changes to the existing screening and landscaping requirements set forth in the Unified Zoning Code and Wichita Landscape Code, respectively. The requested zone change will also not have an effect on the compatibility height or setback standards that apply to this property when abutting residential zoning.

Because the subject property abuts residential zoning, staff is recommending a Protective Overlay that restricts the permitted uses and signage on the properties. The applicant does not have a specific intended use for the property but would like to expand upon existing uses. The uses outlined in the Protective Overlay take nearby residential zoning into consideration and restrict intense uses that may detrimentally affect nearby properties.

Properties to the north are zoned LC Limited Commercial District and developed with a general store. Property to the northeast is zoned GO General Office District and is developed with a medical office. Property to the south is zoned LC Limited Commercial District and is developed with single-family dwellings. Properties to the east, across North Amidon Avenue, are zoned SF-5 Single-Family Residential

District and are developed with single-family dwellings. Properties to the west, on North Charles Avenue, are zoned LC Limited Commercial District and are developed with single-family dwellings.

Analysis: On August 10, 2023, the Metropolitan Area Planning Commission (MAPC) recommended approval (11-0) of the zone change request. No members of the public spoke on this item. Following the MAPC hearing, the applicant expressed desire to modify the conditions of approval, such as eliminating the requirement to pave the vehicle storage area and reducing the number of restricted uses in the proposed Protective Overlay.

On August 14, 2023, the District Advisory Board (DAB) VI recommended approval (6-0) of the zone change request with the same conditions as the MAPC. No members of the public spoke in opposition to the requested zone change. The applicant was present for the meeting.

No protests were received for this case. Therefore, the zone change request can be approved with a simple majority vote (four of seven votes).

Financial Considerations: Approval of this request will not create any financial obligations for the City.

Legal Considerations: The Law Department has reviewed and approved the ordinance as to form.

Recommendation/Actions: It is recommended that the City Council adopt the findings of the MAPC and approve the requested zone change, place the ordinance on first reading, authorize the necessary signatures, and instruct the City Clerk to publish the ordinance after approval on second reading (requires 4 of 7 votes).

Attachments:

1. Aerial Map
2. Zoning Map
3. Future Growth Concept Map
4. Site Pictures
5. MAPC Minutes
6. DAB VI Report
7. Ordinance

City of Wichita
City Council Meeting
September 12, 2023

TO: Wichita Airport Authority

SUBJECT: Federal Aviation Administration
Supplemental Agreement No. 1
Wichita Dwight D. Eisenhower National Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve Supplemental Agreement No. 1.

Background: The Wichita Airport Authority provides land for the Federal Aviation Administration (FAA) Air Traffic Control Tower (ATCT) and parking for the FAA ATCT employees on the Wichita Dwight D. Eisenhower National Airport (Airport). Airport development caused FAA ATCT employee parking to be relocated.

Analysis: This supplemental agreement includes a new surveyed exhibit reflecting the new location of the FAA ATCT employee parking lot. No other terms or conditions of the agreement have been changed.

Financial Considerations: By FAA policy, local airport operators may not charge rents for federal air traffic control and navigational aid facilities that serve the national airspace system. Therefore, there are no financial considerations arising from this supplemental agreement.

Legal Considerations: The Law Department has reviewed and approved the supplemental agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the supplemental agreement and authorize the necessary signatures.

Attachment: Supplemental Agreement No. 1

EXHIBIT A 1 OF 3

P.O.C.
CP-251
SEC. COR.
NE COR., SEC. 33,
T27S, R1W
1" BAR IN THIMBLE

CP-220
1" IRON PIPE
IN THIMBLE

P.O.B.

NO SCALE

KEY MAP

FAA TOWER LOT LEASE
DWIGHT D. EISENHOWER NATIONAL AIRPORT
THE WICHITA AIRPORT AUTHORITY, WICHITA, KANSAS

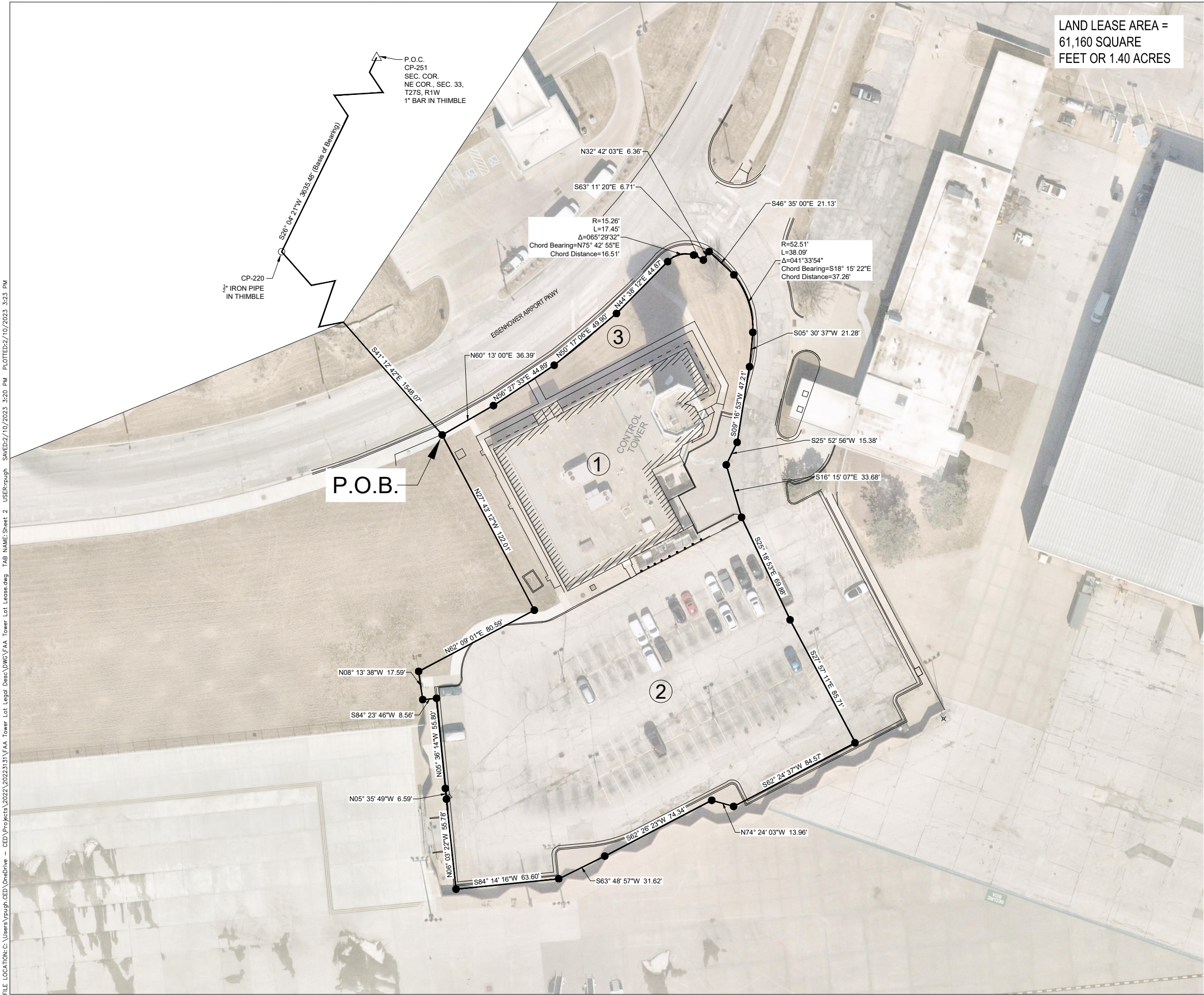
CERTIFIED ENGINEERING DESIGN, P.A.



1935 WEST MAPLE STREET
WICHITA, KANSAS 67213
PH: (316) 262-8808
FAX: (316) 262-1669

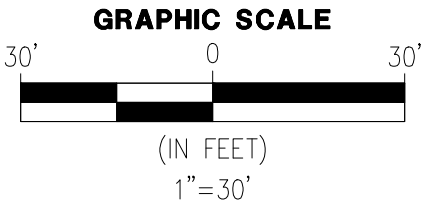
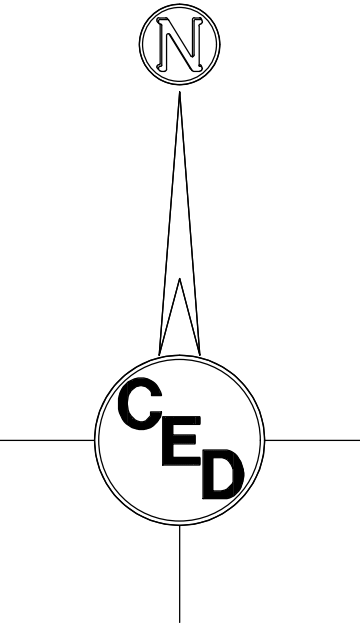
SHEET 1
TOTAL 394

FILE LOCATION: C:\Users\ypugh\OneDrive - CED\Projects\2022\20223131\FAA Tower Lot Lease.dwg TAB NAME: Sheet 2 USER: ypugh PLOTTED: 2/10/2023 3:20 PM PLOTTED: 2/10/2023 3:23 PM



- 1 ATCT BUILDING = 13,923.06 S.F.
- 2 PARKING LOT = 37,515.61 S.F.
- 3 LANDSIDE = 9,721.19 S.F.

LAND LEASE TOTAL = 61,160 S.F.



LEGEND

- Mag Nail
- 1/2" Iron Pipe in Thimble
- △ Section Corner as Noted
- P.O.C. - Point of Commencement
- P.O.B. - Point of Beginning


FAA TOWER LOT LEASE DWIGHT D. EISENHOWER NATIONAL AIRPORT THE WICHITA AIRPORT AUTHORITY, WICHITA, KANSAS		
CERTIFIED ENGINEERING DESIGN, P.A.		
	1935 WEST MAPLE STREET WICHITA, KANSAS 67213 PH: (316) 262-8808 FAX: (316) 262-1669	SHEET 2
		TOTAL 3

EISENHOWER NATIONAL AIRPORT FAA TOWER LOT LEASE DESCRIPTION LAND LEASE DESCRIPTION

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SEDGWICK COUNTY, KANSAS ALSO BEING WITHIN A PORTION OF RESERVE F, WICHITA MUNICIPAL AIRPORT ADDITION TO WICHITA, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SEDGWICK COUNTY, KANSAS; THENCE; S26°04'21"W ALONG AN ASSUMED BASIS OF BEARING (WICHITA AIRPORT COORDINATE SYSTEM), A DISTANCE OF 3635.48 FEET TO A POINT IN THE CENTERLINE OF S AIR CARGO ROAD, DESIGNATED BY A ½ INCH IRON PIPE IN THIMBLE; THENCE S41°12'42"E, A DISTANCE OF 1548.07 FEET TO THE POINT OF BEGINNING; THENCE N60°13'00"E, A DISTANCE OF 36.39 FEET; THENCE N56°27'33"E, A DISTANCE OF 44.89 FEET; THENCE N50°17'06"E, A DISTANCE OF 49.90 FEET; THENCE N44°38'12"E, A DISTANCE OF 44.87 FEET TO A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 15.26 FEET, A CHORD THAT BEARS N75°42'55"E AND A CHORD DISTANCE OF 16.51 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 17.45 FEET; THENCE S63°11'20"E, A DISTANCE OF 6.71 FEET; THENCE N32°42'03"E, A DISTANCE OF 6.36 FEET; THENCE S46°35'00"E, A DISTANCE OF 21.13 FEET TO A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 52.51 FEET, A CHORD THAT BEARS S18°15'22"E AND A CHORD DISTANCE OF 37.26 FEET; THENCE ALONG SAID CURVE A DISTANCE OF 38.09 FEET; THENCE S05°30'37"W, A DISTANCE OF 21.28 FEET; THENCE S09°16'53"W, A DISTANCE OF 47.21 FEET; THENCE S25°52'56"W, A DISTANCE OF 15.38 FEET; THENCE S16°15'07"E, A DISTANCE OF 33.68 FEET; THENCE S25°18'53"E, A DISTANCE OF 69.88 FEET; THENCE S27°57'11"E, A DISTANCE OF 85.71 FEET; THENCE S62°24'37"W, A DISTANCE OF 84.57 FEET; THENCE N74°24'03"W, A DISTANCE OF 13.96 FEET; THENCE S62°26'23"W, A DISTANCE OF 74.34 FEET; THENCE S63°48'57"W, A DISTANCE OF 31.62 FEET; THENCE S84°14'16"W, A DISTANCE OF 63.60 FEET; THENCE N06°03'22"W, A DISTANCE OF 55.78 FEET; THENCE N05°35'49"W, A DISTANCE OF 6.59 FEET; THENCE N05°36'14"W, A DISTANCE OF 55.80 FEET; THENCE S84°23'46"W, A DISTANCE OF 8.56 FEET; THENCE N08°13'38"W, A DISTANCE OF 17.59 FEET; THENCE N62°09'01"E, A DISTANCE OF 80.59 FEET; THENCE N27°43'12"W, A DISTANCE OF 122.01 FEET TO THE POINT OF BEGINNING.

LAND LEASE AREA = 61,160 SQUARE FEET OR 1.40 ACRES MORE OR LESS.

FAA TOWER LOT LEASE DWIGHT D. EISENHOWER NATIONAL AIRPORT THE WICHITA AIRPORT AUTHORITY, WICHITA, KANSAS		
CERTIFIED ENGINEERING DESIGN, P.A.		
	1935 WEST MAPLE STREET WICHITA, KANSAS 67213 PH: (316) 262-8808 FAX: (316) 262-1669	SHEET 3
		TOTAL 396

<p align="center">U.S. Department of Transportation Federal Aviation Administration</p> <p align="center">SUPPLEMENTAL AGREEMENT</p>	<p>SUPPLEMENTAL AGREEMENT NO. <u>1</u> TO FAA CONTRACT NO. DTFASW-09-L-00093</p>
<p>DESCRIPTION or ADDRESS OF PREMISES:</p> <p>TWO TRACTS OF LAND IN RESERVE F, WICHITA MUNICIPAL AIRPORT ADDITION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF SEDGWICK, STATE OF KANSAS CONTAINING TOTAL 1.408 ACRES, MORE OR LESS.</p>	
<p>THIS AGREEMENT, made and entered into this date by and between Wichita Airport Authority hereinafter called the LESSOR, and the UNITED STATES OF AMERICA, hereinafter called the Government:</p> <p>WHEREAS, on November 30, 2009, the parties entered into Lease No. DTFASW-09-L-00093; and,</p> <p>WHEREAS, in accordance with Article 20. VEHICLE PARKING, the Lessor reserves the right to relocate parking spaces required for the Airport Traffic Control Tower (ATCT) facility due to airport development on the Dwight D. Eisenhower National Airport and agrees to furnish the same number of parking spaces; and</p> <p>WHEREAS, the parties agree on the permanent ATCT parking lot location for FAA employees, Government-owned vehicles (GOV), contractors and visitors, as shown on Exhibit A; and</p> <p>WHEREAS, the Lessor has established the new parking lot, drive entrance, and security fencing around both ATCT and parking lot at their cost and the Government pays for costs incurred for new gates and security system upgrades to accommodate FAA security access needs; and</p> <p>WHEREAS, the legal description of leased premises is to be updated to include one land tract for the ATCT facility site and parking lot; and</p> <p>WHEREAS, the parties hereto desire to amend the above real estate contract effective as of October 1, 2023.</p> <p>NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said real estate contract is amended, as follows:</p> <p>Amend Article 1. PREMISES to delete legal description and substitute as follows:</p> <p>1. PREMISES</p> <p>The Lessor hereby leases to the Government the described property, hereinafter referred to as the premises as shown on the Exhibit A, and attached to this Supplemental Agreement No. 1:</p>	

IN WITNESS WHEREOF, the parties subscribed their names and date.

LESSOR – WICHITA AIRPORT AUTHORITY

Brandon J. Whipple
LESSOR

Date

ATTEST

Jamie Buster, City Clerk
LESSOR

Date

Jesse R. Romo
Director of Airports, A.A.E.

Date

APPROVED AS TO FORM:

Jennifer Magaña,
City Attorney and Director of Law

Date

UNITED STATES OF AMERICA

Real Estate Contracting Officer

Date

CERTIFICATE OF AUTHORIZATION

I, the undersigned, hereby certify that _____, who signed this instrument on of behalf of _____ is in fact authorized to sign on behalf of _____ by authority of its governing resolution, and is within the scope of its powers.

Print Name: _____

Print Title: _____

Signature: _____

Date: _____

City of Wichita
City Council Meeting
September 12, 2023

TO: Wichita Airport Authority

SUBJECT: AirMS, LLC
Use and Lease Agreement
Wichita Dwight D. Eisenhower National Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Use and Lease Agreement.

Background: In September 2021, the Wichita Airport Authority (WAA) approved the assignment for the hangar at 3260 N. Jabara Road on Colonel James Jabara (Airport) from Mann Aviation, LLC to AirMS, LLC (AirMS). The permitted use in the assigned agreement is for private, non-commercial purposes. AirMS has requested the ability to conduct commercial maintenance, repair, and storage of aircraft on the premises.

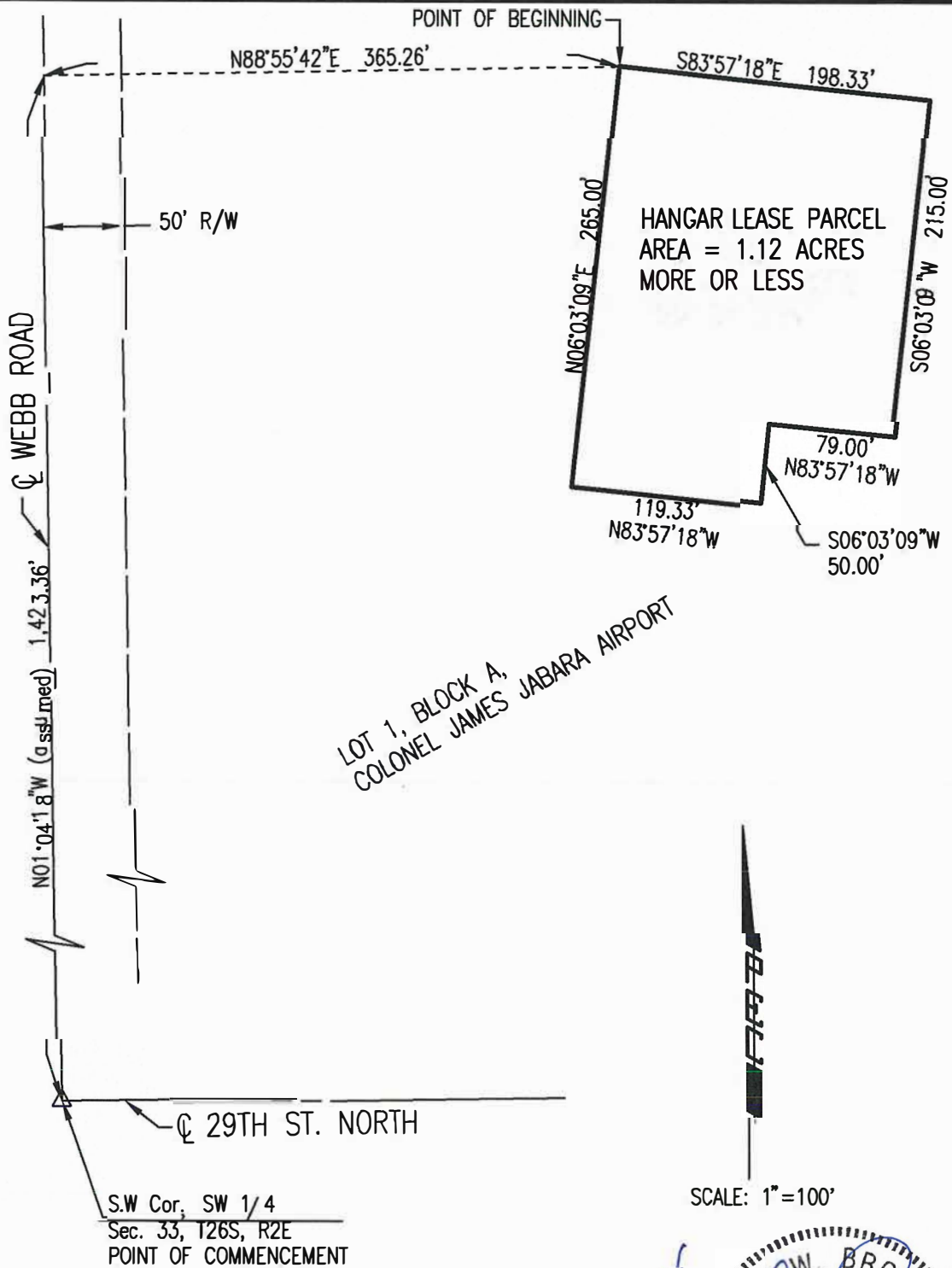
Analysis: A new Use and Lease Agreement has been negotiated with AirMS to operate as a commercial hangar operator. A commercial hangar operator can have commercial activities such as storage of aircraft owned by others, flight schools, charters, and maintenance; but it cannot sell fuel. In return for the expanded permitted use, the latest lease language has been utilized, and the land rent schedule has been updated to the WAA's current published rate and escalation. The proposed agreement is for 20 years, effective October 1, 2023.

Financial Considerations: The total annual land rent for the first year will be \$11,714, a 40 percent increase compared to the current rent.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the agreement and authorize the necessary signatures.

Attachment: Use and Lease Agreement



11-28-11

DATE

CHARLES W. BROOKSHER, L.S. NO. 1281
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.



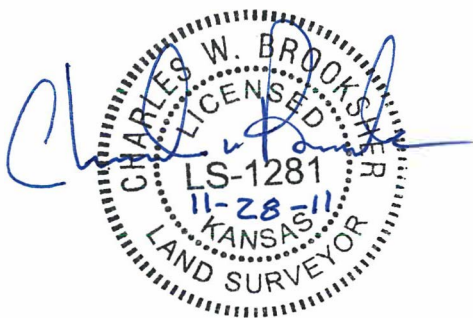
November 28, 2011

Lease Description
3260 N. Jabara Rd. at Jabara Airport

A Tract of land located in Lot 1, Block A, Colonel James Jabara Airport an Addition to Sedgwick County, Kansas.

Commencing at the Southwest corner of the Southwest Quarter of Section 33, Township 26 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas; thence on an assumed bearing of N01°04'18"W along the West line of said Southwest Quarter, a distance of 1,423.36 feet; thence bearing N88°55'42"E, a distance of 365.26 feet to the Point of Beginning of the lease parcel; thence bearing S83°57'18"E, a distance of 198.33 feet; thence bearing S06°03'09"W, a distance of 215.00 feet; thence bearing N83°57'18"W, a distance of 79.00 feet; thence bearing S06°03'09"W, a distance of 50.00 feet; thence bearing N83°57'18"W, a distance of 119.33 feet; thence bearing N6°03'09"E; a distance of 265.00 feet to the Point of Beginning.

Containing 48,608 square feet or 1.12 acres more or less.



Prepared by Charles W Brooksher LS #1281
PEC Project No. 60X-11473



USE AND LEASE AGREEMENT

by and between

WICHITA AIRPORT AUTHORITY

and

AirMS, LLC

at the

Col. James Jabara Airport
3260 Jabara Road
Wichita, Kansas

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THIS USE AND LEASE AGREEMENT (“Agreement”) is entered into this September 19, 2023, between the Wichita Airport Authority, Wichita, Kansas (“LESSOR”) and AirMS, LLC, Federal Tax Identification #80-0064714 (“LESSEE”), or collectively referred to as the (“Parties”) to this Agreement.

WHEREAS, LESSOR is a quasi-governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, LESSOR owns, operates, regulates, administers, and maintains the Wichita Col. James Jabara Airport (“Airport”); and

WHEREAS, LESSEE is an individual or an entity authorized to operate in the state of Kansas that desires to lease land and improvements for aeronautical purposes on Airport from LESSOR under the terms and conditions set forth in this Use and Lease Agreement; and

WHEREAS, the Parties wish to terminate, effective on the commencement date of this Agreement, the Use and Lease Agreement dated May 15, 2012 and the Assignment of Use and Lease Agreement dated September 21, 2021; and

WHEREAS, the Parties desire to enter into this USE AND LEASE AGREEMENT for the purpose of LESSEE leasing from LESSOR parcels of Land and improvements thereon, and providing commercial aeronautical services therefrom; and

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby covenant and agree as follows:

1. PREMISES

- a.** LESSOR does hereby agree to let to LESSEE, and LESSEE does hereby agree to rent from LESSOR certain real property located at the Wichita Col. James Jabara Airport, 3260 Jabara Road, Wichita, Kansas consisting more or less of 48,608 sq. ft. of Land, (“Premises”), as set forth and shown on the attached Exhibit “A”. The Premises shall include the aircraft parking apron, and any Facilities, structures, and improvements located thereupon the Land.
- b.** The taking of possession of the Premises by LESSEE shall in itself constitute acknowledgement that the Premises are in good and tenantable condition, and LESSEE agrees to accept Premises in its presently existing condition, “as is,” “where is,” and that LESSOR shall not be obligated to make any improvements or modifications to the Premises.

- c. During the Term of this Agreement, LESSOR or LESSEE may cause to be re-measured by a Kansas professional surveyor, areas within and around the Premises in an effort to more accurately reflect improvements, additions and modifications. In the event the square footage of the Premises identified herein differs from the Premises square footage determined by such re-measurement, the Parties agree to enter into an amendment to this Agreement to modify the Premises description to reflect the actual square footage of the Premises subject to the provisions of this Agreement. If the actual square footage of the Premises is determined to differ from that square footage herein defined, the then-current rent shall be re-calculated and applied. Thereafter, LESSEE's rent shall be based upon the re-measured square footage. The Director of Airports may execute an amendment to this Agreement on behalf of LESSOR to reflect the adjusted premises and rent.

2. TRIPLE NET LEASE

The Parties agree that this is a triple net lease and that, unless otherwise agreed to in this Agreement or by amendment or supplement thereto, LESSEE is solely responsible for all obligations normally imposed on the Premises, including but not limited to utilities, taxes, insurance, maintenance and repairs, and any other expenses and costs that arise from LESSEE's tenancy, use, operation and administration of the Premises.

3. TERM

The Term shall commence ("Commencement Date") on October 1, 2023 and shall continue for a period of twenty (20) years ("Term"), with the Term expiring on September 30, 2043, unless otherwise terminated under provisions agreed to herein.

4. LAND RENT

Land Rent is defined as that rent due and payable to the LESSOR by the LESSEE for the Land, as measured from the outer-most limits of the leased property Premises as set forth and shown on the attached Exhibit "A". Upon Commencement Date of this Agreement, LESSEE shall pay Land Rent to LESSOR as follows:

LAND RENT						
INITIAL TERM						
EXCLUSIVE USE						
Leased Land Total of 48,608 sq. ft.						
<i>Escalation rate = 1% annually</i>						
Years				Rate Per Sq. Ft.	Annual	Monthly
1	10/1/2023	-	9/30/2024	0.2410	\$11,714.52	\$976.21
2	10/1/2024	-	9/30/2025	0.2434	\$11,831.64	\$985.97
3	10/1/2025	-	9/30/2026	0.2458	\$11,949.96	\$995.83
4	10/1/2026	-	9/30/2027	0.2483	\$12,069.48	\$1,005.79
5	10/1/2027	-	9/30/2028	0.2508	\$12,190.20	\$1,015.85
6	10/1/2028	-	9/30/2029	0.2533	\$12,312.12	\$1,026.01
7	10/1/2029	-	9/30/2030	0.2558	\$12,435.24	\$1,036.27
8	10/1/2030	-	9/30/2031	0.2584	\$12,559.56	\$1,046.63
9	10/1/2031	-	9/30/2032	0.2610	\$12,685.20	\$1,057.10
10	10/1/2032	-	9/30/2033	0.2636	\$12,812.04	\$1,067.67
11	10/1/2033	-	9/30/2034	0.2662	\$12,940.08	\$1,078.34
12	10/1/2034	-	9/30/2035	0.2689	\$13,069.56	\$1,089.13
13	10/1/2035	-	9/30/2036	0.2716	\$13,200.24	\$1,100.02
14	10/1/2036	-	9/30/2037	0.2743	\$13,332.24	\$1,111.02
15	10/1/2037	-	9/30/2038	0.2770	\$13,465.56	\$1,122.13
16	10/1/2038	-	9/30/2039	0.2798	\$13,600.20	\$1,133.35
17	10/1/2039	-	9/30/2040	0.2826	\$13,736.16	\$1,144.68
18	10/1/2040	-	9/30/2041	0.2854	\$13,873.56	\$1,156.13
19	10/1/2041	-	9/30/2042	0.2883	\$14,012.28	\$1,167.69
20	10/1/2042	-	9/30/2043	0.2912	\$14,152.44	\$1,179.37

5. FACILITY RENT

Facility Rent is defined as that rent due and payable to the LESSOR by the LESSEE for the structures, and appurtenances thereto, upon the Land as measured from the outer-most vertical surfaces of the structures as set forth and shown on the attached Exhibit “A”. Facility Rent for all facilities shall commence on May 1, 2032 and shall be set at the then-current market rent of such facilities, structures, fixtures and improvements as determined by a single independent third-party licensed and accredited commercial property appraiser with aviation and airport property market experience. The appraiser shall be selected by agreement of the Parties.

6. RIGHT OF FIRST REFUSAL

- a. Effective on the Commencement Date and continuing for five (5) years, LESSEE is granted a one-time right-of-first-refusal (“ROFR Property”) to enter into a use and lease agreement, or supplement to this Use and Lease Agreement with the LESSOR to lease 55,973 sq. ft. of land immediately west and adjacent to the Premises as shown in Exhibit “B.” LESSEE shall pay to LESSOR as follows for ROFR Property:

RIGHT OF FIRST REFUSAL						
Total of 55,973 sq. ft.						
<i>Escalation rate = 1% annually</i>						
Years				Rate Per Sq. Ft.	Annual	Monthly
1	4/1/2023	-	3/31/2024	0.0241	\$1,348.92	\$112.41
2	4/1/2024	-	3/31/2025	0.0243	\$1,362.48	\$113.54
3	4/1/2025	-	3/31/2026	0.0246	\$1,376.04	\$114.67
4	4/1/2026	-	3/31/2027	0.0248	\$1,389.84	\$115.82
5	4/1/2027	-	3/31/2028	0.0251	\$1,403.76	\$116.98

- b. Upon conditional acceptance by LESSOR of a third party proposal to develop the ROFR Property, LESSOR shall give written notice to LESSEE of the proposed term, rent schedule, capital investment and a development schedule for construction. LESSEE shall have a period of thirty (30) calendar days following the date of said written notice from LESSOR to submit a written notice-of-intent to exercise its right to lease and develop the ROFR Property. Any notice-of-intent submitted to LESSOR by LESSEE shall include development of like or greater scope and size, design and construction time-frame reasonably mirroring the third party proposal, and same or higher lease rates as that proposed by the third party. The Land Rental Rate shall be no less than the then-current rate and escalation rate shown in the SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY, or will be set at the initial rental rate and escalation that was proposed by the third party, if higher. Upon LESSOR’s written acceptance of the notice-of-intent from LESSEE, LESSEE shall then have sixty (60) calendar days to agree to terms and conditions for a use and lease agreement, or a supplement to this Use and Lease Agreement, with LESSOR.
- c. If LESSEE fails to give timely written notice-of-intent or if LESSEE and LESSOR fail to agree to terms and conditions as described in this Section, then the right-of-first-refusal granted under this Section shall terminate and no longer be in further force and effect and LESSOR shall have the right to contract with any other party for the development of the ROFR Property on any terms LESSOR desires.
- d. If the one-time right-of-first-refusal has not been exercised by September 30, 2028, it shall terminate and no longer be in further force and effect as of that date.

7. UTILITIES

- a.** LESSEE shall pay all costs for utility services (whether for installation, service, administration, connection, or maintenance thereof) used by LESSEE at or upon the Premises with no responsibility or expense accruing or ascribed to LESSOR, including all permits, licenses or authorizations necessary in connection therewith. Such payments by LESSEE shall be made directly to the utility supplier or service provider.
- b.** If LESSEE requires utilities beyond what is currently available, LESSEE agrees to pay the full cost and expense associated with the upgrade/extension/installation of all such utilities related to its use of the Premises, and to comply with all provisions for maintaining such utilities.
- c.** LESSOR reserves for itself, and its utility providers, the right to upgrade, extend, install, maintain and repair all utilities and services on or across the Premises, whether or not such services or utilities are for the benefit of LESSEE. LESSOR shall take all reasonable care and diligence to protect existing improvements and utilities, and shall avoid to the greatest extent possible, any unreasonable interference or interruption to LESSEE'S operations.
- d.** LESSEE shall design and install all utilities used by LESSEE subject to the express approval of the LESSOR prior to installation. All utilities, including but not limited to, electrical, gas, water, sanitary sewer, data and communications utilities installed or caused to be installed shall be underground, and no utility services or other cables or wires shall be installed on poles or otherwise above ground. Unless otherwise provided in this Agreement, all conduits or ducts installed shall be considered fixtures as defined under Section 25 TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES, and shall become the owned property of LESSOR. All utility facilities installations shall meet the requirements of Section 22 FUTURE ALTERATION AND IMPROVEMENT STANDARDS of this Agreement.
- e.** Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. LESSEE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto. A copy of LESSEE'S Stormwater Pollution Prevention Plan and Spill Prevention Control and Countermeasure Plan shall be submitted to LESSOR upon LESSOR'S request.

8. OTHER FEES AND CHARGES

Unless otherwise defined in this Agreement, LESSOR may assess fees and charges to LESSEE according to rates established by LESSOR in LESSOR's then-current SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY. Such Schedules may be amended from time-to-time by action of the LESSOR upon a minimum of thirty (30) calendar day's written notice. LESSOR's SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY shall uniformly apply, and be enforced, with regard to all tenants and operators of the same user groups on the Airport as defined by the SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY.

9. INVOICES AND PAYMENTS

- a. LESSEE shall pay to LESSOR in advance on the first day of each month, without demand or invoicing, for rental for the Premises as established in Section 4 LAND RENT, Section 5 FACILITY RENT and Section 6 RIGHT OF FIRST REFUSAL of this Agreement. LESSEE shall pay to LESSOR all other fees and charges within thirty (30) calendar days of the date of invoices of all amounts due as set forth in this Agreement. In the event LESSEE fails to make payment within ten (10) calendar days of the dates due as set forth in this Agreement, and after LESSOR has provided LESSEE with written notice and LESSEE does not make payment within seven (7) calendar days after the date said notice is received, then LESSOR, may charge LESSEE a monthly service charge of twelve percent (12%) on an annual basis for any such overdue amount, unless a lesser sum is set as the maximum allowable under state statutes on any such overdue amount, plus reasonable attorneys' and administrative fees incurred by LESSOR in attempting to obtain payment. If LESSOR does not receive payment within seven (7) calendar days of the date of receipt of said written notice, then the monthly service charge shall retroactively commence on the date the payment was originally due.
- b. Fuel Flowage Fees: LESSEE shall pay to LESSOR a per gallon Fuel Flowage Fee pursuant to the then-current SCHEDULES OF FEES AND CHARGES FOR THE WICHITA AIRPORT AUTHORITY, on aircraft fuel or propellant dispensed from the LESSEE's fuel storage facility. LESSEE shall furnish to LESSOR for each calendar month a statement showing total fuel gallons by the tenth (10th) day of the month following each calendar month. LESSOR reserves for itself the sole right to charge by separate agreement any provider, either commercial, non-commercial, retailer, wholesaler, or for company or personal use, a Fuel Flowage Fee for all aeronautical or non-aeronautical fuels delivered to and dispensed on the Airport.
- c. LESSEE shall make all payments to the Wichita Airport Authority in a form acceptable to LESSOR. ACH direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to the address in Section 11 NOTICES or such other address as designated in writing by LESSOR.

10. REPORTING

- a. Reporting: Activity reports to LESSOR pursuant to the provisions hereof shall be sent via e-mail to: ICT-AcctsRec@wichita.gov or such other e-mail address or via such other electronic reporting system as designated in writing by LESSOR.
- b. Books, Records, and Audit: LESSEE shall maintain and report accurate and complete reports and records, and agrees that for the purpose of demonstrating the correct and appropriate amounts payable to LESSOR for Fuel Flowage Fees, it shall keep proper books, records, and accounts in accordance with generally acceptable accounting principles necessary to reflect the accuracy and validity of such payments. LESSEE agrees to give LESSOR, or LESSOR'S designated examiner, access during reasonable business hours for inspection of LESSEE'S books and records with seven (7) business days advance written notice. LESSEE shall produce such books and records at Premises in Wichita, Kansas. The subject of audits, if required by LESSOR, shall include only those items necessary to verify and validate the sale of product and service transactions for which the LESSOR is due, or may be due. Such books, ledgers, accounts and records shall be available for inspection by LESSOR for a period of three (3) years from the date of such activity.

11. NOTICES

- a. Notices or other contractual communications to LESSOR pursuant to the provisions hereof shall be sufficient and irrefutably deemed received if sent regular to WAAProperties@wichita.gov mail, postage prepaid, or by a nationally recognized overnight courier, addressed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated in writing by LESSOR.

- b. Notices and invoices may be delivered to LESSEE by mail, email, or personal delivery at:

AirMS, LLC, Martin Sellberg
3521 Bayview Ct.
Wichita, Kansas 67204
Email: msellberg@gmail.com

or such other address as designated in writing by LESSEE.

12. LESSEE'S IDENTITY

LESSEE must be a natural person or a state franchised business entity (such as a corporation, partnership, limited liability company, or a joint venture) under State of Kansas Law and is registered with the Kansas Secretary of State.

13. NON-EXCLUSIVE USE AND ACCESS

LESSEE may access and use certain areas in common with other tenants who now and may hereafter occupy other portions of the Airport. LESSEE in common with other tenants, shall have the right to use public roadways, streets, aircraft parking ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical or non-aeronautical activities, and these common use facilities are not offered exclusively to any party. LESSEE shall conduct its operations in such a manner as to not block, impede, hinder, or obstruct access by others to these common use facilities, nor in any other way interfere with, nor disrupt the business of other tenants, or the quiet enjoyment of their leasehold interests at the Airport. LESSEE recognizes that this right of quiet enjoyment and unimpeded access extends to all tenants equally.

14. PERMITTED COMMERCIAL AERONAUTICAL SERVICES AND USE

- a. LESSEE shall have the right to occupy and use the Premises for aeronautical purposes allowed by Federal Aviation Regulations. LESSEE may exercise any or all use rights consistent with a Commercial Hangar Operator as set out in the Minimum Standards for Aeronautical Activities and Services. The Director of Airports is authorized by LESSOR to execute amendments to this Agreement on behalf of LESSOR to amend this Section a.
- b. LESSEE shall have the right of ingress and egress, in common with others, for both vehicles and aircraft, for the benefit of its employees, invitees, contractors, subcontractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to LESSEE'S approved activities, and for no other purposes except as may be approved in writing by LESSOR. This right is subject to federal, state and local security and safety requirements and standards. As required by Kansas state statute and the City of Wichita Charter Ordinance, the Premises shall be used and occupied only for aviation purposes or purposes incidental or related thereto in support of Commercial Hangar Operator activities.

15. PROHIBITED SERVICES AND USE OF PREMISES

- a.** The Premises shall not be used for any purpose not expressly permitted in Section 14 PERMITTED COMMERCIAL AERONAUTICAL SERVICES AND USE unless expressly authorized by prior written consent of the LESSOR. The following operations, services or concessions shall be specifically prohibited upon or from the Premises or any other location on the Airport without the prior written consent of the LESSOR, and then only with provisions for payment of fees, charges, or percentage of gross sales as may be deemed reasonably appropriate by the LESSOR. The Director of Airports is authorized by LESSOR to execute amendments to this Agreement on behalf of LESSOR to amend this Section a. 1) through 12).
- 1)** Commercial catering, restaurant and/or lounge concessions, except as may be incidental to aeronautical activities, customer support and convenience, courtesy/complimentary services, or commercial vending operations on the Premises;
 - 2)** Subleasing, permitting or contracting the Premises or portions thereof to any party not engaged in an aviation activity, or contrary to the provisions of Section 39 SUBLEASING, PERMITTING, AND CONTRACTING;
 - 3)** Commercial (for hire) ground transportation;
 - 4)** Commercial “paid” parking;
 - 5)** Commercial hotel or lodging;
 - 6)** Commercial outdoor advertising;
 - 7)** Sale of non-aviation or non-aeronautical products and services;
 - 8)** Sale, trade or bartering of aviation fuels, or other fuel or lubricant products;
 - 9)** Revenue-producing communication systems or systems not directly applicable to LESSEE’s operations on the Premises;
 - 10)** Automobile rental business or franchise;
 - 11)** Storage and/or maintenance of any auto, truck, trailer, camper, boat, jet ski, motorcycle, recreational vehicle, or other non-aviation or non-aircraft service and support vehicle or equipment; provided, that parking of customers’ personal automobiles while the customers are traveling is not prohibited;
 - 12)** Any activity reasonably considered by LESSOR to not be aeronautical services, aviation purposes, and the support and administration thereof.
- b.** LESSEE, its affiliated entities, subsidiaries, employees, agents, representatives, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises, except as defined and described in this Agreement, unless such is provided for by a separate written approval or amendment to this Agreement, and subject to approval by LESSOR.
- c.** The LESSEE shall not perform, or allow to be performed, any engine “run-up” in excess of fifty percent (50%) power level on the Premises.

- d. LESSEE shall have no right to overhang or otherwise invade by vegetation, equipment, improvements, or any part of an aircraft, beyond the leasehold Premises boundary, or the vertical areas there above commencing at the Premises lease lines. This prohibition applies to both permanent and transitory invasions. The sole exception to this provision shall be for the navigational easement, described in the Airspace and Easement for Flight provisions of Section 55 GENERAL PROVISIONS, granted to airborne aircraft.

16. FUEL STORAGE AND DISTRIBUTION SYSTEMS

- a. At its discretion and in accordance with the provisions of this Agreement, LESSEE is granted the right of self-fueling as defined in Section 17 AIRCRAFT SELF-SERVICES NOT PROHIBITED, and may install, operate and maintain upon the Premises, at its own cost and expense, above ground fuel storage tank(s) (AST) and dispensing facilities, equipment and systems, and auxiliary and ancillary appurtenances thereto reasonably required to perform self-fueling. Underground fuel storage tanks are prohibited. The self-fueling right granted to LESSEE by LESSOR upon the Premises under this Agreement shall not extend to sublessees or any others not a party to this Agreement.
- b. LESSEE shall at all times comply with all applicable laws, rules, regulations, and permit requirements now in effect or as may be revised, and industry standard practices and petroleum product supplier recommendations pertaining to petroleum storage tanks and distribution systems, including but not limited to operation, inspection, monitoring, secondary containment, release detection, Stormwater Pollution Prevention and Spill Prevention Control and Countermeasure Plan, maintenance, preventive maintenance, and best management practices. LESSEE shall be responsible for all spillage, overflow, release or escape of petroleum products within, to or from the fuel facility and for any fines or penalties in connection therewith. All fuel tanks shall be registered by and permitted to LESSEE as required by law. LESSEE shall provide to LESSOR, at LESSOR's request, copies of all current tank permits that may be required by law. LESSEE shall be responsible for response, notifications, clean-up and remediation costs related to any reportable spills, discharges, releases of petroleum products in accordance with federal, state and local laws. LESSEE shall promptly notify LESSOR of any reportable spills, discharges, releases of petroleum products on the Premises.
- c. LESSEE shall identify and provide to LESSOR, and LESSEE shall maintain in force any and all licenses, permits and operating certificates required for the legal operation and use of all aspects of these operations. LESSEE shall be responsible for initiating, maintaining, and overseeing all safety precautions and programs for purposes of risk management and risk reduction which may be reasonably directed or suggested by the insurance underwriter, underwriter's authorized agent, or LESSOR. LESSEE shall keep and maintain fire monitoring, warning, and suppression systems, if any, in proper functioning order at all times, and shall from time to time as reasonably required by LESSOR, state or local government, or insurance underwriter, and conduct appropriate tests of the system.

- d. LESSEE shall provide initial and on-going recurrent training to its employees on legal, industry standard, and proper procedures in the operation and maintenance of LESSEE's fuel facilities, including but not limited to:
- 1) fire prevention and safety
 - 2) environmental/spill prevention best management practices
 - 3) emergency response to accidental releases
 - 4) dispensing to mobile fuelers
 - 5) fuel product quality control
- e. Fuel storing, handling and dispensing shall meet or exceed the requirements of all federal, state and local regulations, laws and/or codes, and industry standards, including but not limited to the following: National Fire Protection Association (NFPA), Airport Rules and Regulations, and Airport Standard Operating Procedures as currently adopted or as may be amended, or any such successor or otherwise applicable regulations.

17. AIRCRAFT SELF-SERVICES NOT PROHIBITED

- a. The Parties acknowledge and agree, for the purposes of this Agreement, and in accordance with the definition and intent of the U.S. Department of Transportation, FAA Airport Compliance Manual - ORDER 5190.6B, "Self-Fueling" shall mean the fueling of an aircraft by the aircraft owner or operator, or with his or her own employees and using his or her own equipment. Self-Fueling, and the operation and maintenance of equipment and systems reasonably required in support thereof, shall be subject to Authority's enforcement of reasonable and non-discriminatory rules, procedures and standards that would prevent unsafe, unsightly, detriments to public welfare, or that would affect the efficient use of the Airport by others. Self-Fueling applies to fuel purchased, contracted, or obtained by the aircraft owner or operator for his/her use from the source of his/her preference. Self-Fueling is not a commercial activity, and shall not be contracted out to another party.
- b. Permitted Activities shall include those definitions specifically contained in U.S. Department of Transportation, FAA Airport Compliance Manual – ORDER 5190.6B: et al. "An aircraft owner or operator, including but not limited to individuals, air carriers, air taxis, corporate flight departments, charter operators, or flight schools may:
- 1) Perform self-service operations, usually in accordance with 14 CFR Part 43;
 - 2) Use its own source for parts and supplies;
 - 3) Perform its own self-fueling activities, including bringing fuel to the airport with its own employees in conformance with the sponsor's rules and regulations pertaining to self-service operations."

- c. The Parties acknowledge and agree, for the purposes of this Agreement, and in accordance with the definition and intent of the U.S. Department of Transportation, FAA Airport Compliance Manual - ORDER 5190.6B, "Self-Service" shall mean legally authorized activities such as adjusting, repairing, cleaning, and otherwise servicing an aircraft by the aircraft owner or operator, or his/her employees with resources supplied by the aircraft owner. Self-Service is not a commercial activity, and shall not be contracted out to another party. "Self-Service" does not permit operation as a fixed-base operation.
- d. The Parties acknowledge and agree, for the purposes of this Agreement, that no right or privilege has been granted to LESSEE which would prevent any person, firm or corporation operating aircraft on the Airport from performing any lawful services on its own aircraft with its own regular employees, including but not limited to "Self-Fueling" and "Self-Service," that it may choose to perform, and may be allowed, or not otherwise prevented by, federal law or regulation. Services that are performed by persons other than an owner or operator, or employees thereof for compensation or other consideration are deemed to be commercial activities and may only be provided by persons and/or companies authorized by the Wichita Airport Authority to conduct such commercial business at the Airport. Any person, firm or corporation shall, however, whether defined as "Self-Fueling" or "Self-Service," comply with all federal, state and local codes, regulations, and statutes which apply to such service or activity.
- e. In accordance with this Section 17 and airport policies, the Director of Airports may issue permits for above ground fuel storage tanks, dispensing facilities, equipment and systems reasonably required to perform self-fueling.

18. LESSEE'S RIGHTS AND PRIVILEGES

LESSEE shall have the following rights and privileges on the Premises and on the Airport:

- 1) Those rights and privileges specifically authorized under this Agreement; and
- 2) The rights to install, operate, repair, and store upon the Premises all personal property and fixtures necessary for the conduct of LESSEE's lawful business; and
- 3) The right to public and non-exclusive use taxiway connections and access to and from the Premises and LESSOR's public and non-exclusive use air operations areas (AOA) connecting and adjacent to the Premises subject to the provisions of Section 20 NON-INTERFERENCE WITH AIRPORT OPERATIONS, and Section 21 COOPERATION WITH AIRPORT DEVELOPMENT.
- 4) All other rights and privileges expressly granted to LESSEE under the terms and conditions of this Agreement.

19. LESSOR'S RIGHTS AND PRIVILEGES

a. LESSOR expressly reserves from the Premises:

- 1) Mineral Rights. All gas, oil and mineral rights in and under the soil.
- 2) Water Rights. All statutory, exempt, vested, and granted appropriation rights for the use of water, and all rights to request further appropriations for the Premises.
- 3) Airspace. A public right of flight through the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operation on the Airport. No liability on the part of LESSOR or any tenant will result from the exercise of this right.
- 4) Navigational Aids. The right to install, maintain and modify and/or permit others to install, maintain and modify on the Premises visual and electronic navigational aids.
- 5) Entry and Inspection of Premises. The right of LESSOR, its authorized officers, employees, agents, contractors, subcontractors, authorized government agents, or other representatives to enter upon the Premises:
- 6) Inspection. To inspect at reasonable intervals during regular business hours, and with prior notice, to determine whether LESSEE has complied, and is complying with the terms and conditions of this Agreement. To inspect without notice at any time in case of emergency, apparent or imminent emergency or urgency, or lawful investigation the Premises, facilities, and equipment for compliance with laws, regulations and/or codes of the federal, state or local government, airport rules and regulations, and airport standard operating procedures; and
- 7) Radio/Wireless Communication Systems. The right to approve or withhold approval of any use of fixed RF Systems for the transmission of radio frequency signals in/on the Premises.
- 8) General Provisions. The right to exercise any and all rights set out in Section 55, GENERAL PROVISIONS.
- 9) Signage. The right to enter onto the Premises for installation, and the right to install any signage on the Premises required by law, order, rule, regulation, Airport Security Program or federal directive.

b. Provided that exercise by LESSOR of any such reserved rights 1) through 9) shall be without expense to LESSEE and shall not unreasonably or materially interfere with LESSEE's use of the Premises and shall not unreasonably delay LESSEE in the exercise of its rights, or the performance of its duties hereunder, or increase the costs of such performance.

c. LESSOR reserves the right to grant and/or permit other parties the right to use any portion of the Airport, except that described in Section 1, Premises, for any permitted purpose, and upon any fair and non-discriminatory terms established by the LESSOR.

20. NON-INTERFERENCE WITH AIRPORT OPERATIONS

LESSEE covenants and agrees that it shall not cause, consent to, or allow to be caused on the Premises:

- 1) Any activity or condition which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall LESSEE use or permit the Premises to be used in any manner which might interfere with the ground movement, landing and take-off of aircraft from the Airport, or otherwise constitute a hazard or nuisance to the general public, or to LESSOR's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants; and
- 2) Any activity or condition which shall materially or adversely affect, infringe upon, block, or interrupt the operations and business activity of other airport tenant leaseholds; and
- 3) Any activity or condition resulting in damage, destruction, or interruption of water, sewer, electric, gas, communications or data utility facilities and services, or to fire detection and suppression systems; and
- 4) The storage of flammable or combustible materials except as allowed by LESSOR under this Agreement, and only in accordance with applicable federal, state, and local laws and ordinances, and applicable fire, building, and safety codes; and
- 5) Any activity or condition causing, or which may cause, LESSOR to become in conflict or violation of any relevant provisions of 14 CFR Part 139, or 49 CFR Part 1542; and
- 6) Any activity or condition causing, or which may cause a violation of 14 CFR Part 77 *Safe, Efficient Use and Preservation of the Navigable Airspace*, or applicable sections of Chapter 28.08 of the City of Wichita and Sedgwick County *AIRPORT HAZARD ZONING CODE*; and
- 7) Any activity or condition causing, or which may cause or create electronic interference of aeronautical communications or navigational signals between aircraft and ground based equipment.

21. COOPERATION WITH AIRPORT DEVELOPMENT

LESSEE understands and agrees that LESSOR may pursue Airport development, improvements and maintenance activities from time-to-time that may directly or indirectly affect the Premises and other areas of the Airport. LESSEE agrees to work cooperatively and in good faith with LESSOR and other tenants and contractors in development, improvement and maintenance activities to minimize or mitigate any disruptions. If requested by LESSOR, LESSEE shall cooperate with and reasonably assist LESSOR to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities, provided that nothing herein shall obligate LESSEE to perform or pay for any development, improvement, or maintenance pursued by LESSOR without the prior written agreement of the Parties. LESSOR may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as reasonable means of ingress and egress to the Airport are maintained to the greatest extent practical, provided that LESSEE shall be entitled to an equitable

abatement of rent for any period where ingress or egress to the Premises is suspended, or in the event that the Airport is closed and/or air traffic to and from the Airport is suspended for a period longer than seven calendar (7) days. LESSOR may temporarily close runways, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Exercise by LESSOR of any such Airport development, improvement, or maintenance shall be paid by LESSOR. LESSEE shall not be entitled to any compensation for loss of revenue, business interruption, relocation, temporary storage rental, additional labor costs, additional increased fuel costs, cycles on engines, or any other expense attributable to the development, improvement, or maintenance on the Airport.

22. FUTURE ALTERATION AND IMPROVEMENT STANDARDS

- a.** LESSEE may construct facilities and improvements on the Premises subject to LESSOR's prior written approval of LESSEE's proposed plans and specifications. All construction shall be performed in a good and skilled manner with adherence to the terms and conditions of this Agreement, and all applicable federal, state, and local rules, regulations, codes, and Airport Standard Operating Procedures.
- b.** LESSEE agrees to pay all costs incurred in connection with construction of any future structures, facilities, improvements, additions or alterations unless otherwise expressly agreed to in writing by LESSEE and LESSOR. LESSEE agrees to make direct payment to all materials, product and service providers for all such costs as they are incurred. LESSEE shall have no right, authority, or power to bind LESSOR or any interest of LESSOR in the Premises for the payment of any claim for labor or material or for any charge or expense incurred in the erection, construction, operation, or maintenance of said improvements and Premises.
- c.** Before beginning new construction, LESSEE shall, by agreement with its contractor or otherwise, provide performance, labor and material payment bonds and statutory bonds with respect to any improvement that exceeds fifty thousand dollars (\$50,000) in cost constructed on the Premises in the full amount for the project contract. The general contractor under any such contract shall be the principal and a surety company qualified to do business in Kansas shall serve as surety. Such performance, labor and material payment bonds shall name the Wichita Airport Authority and the City of Wichita, Kansas as the obligees. The statute of limitations on all such bonds shall be for a minimum of two (2) years from project completion.

- d. For improvement that exceeds fifty thousand dollars (\$50,000) constructed on the Premises, LESSEE shall purchase and maintain a builder's risk insurance policy, or require its prime contractor to carry such policies, in a sum equal to the full project replacement value. Builder's Risk coverages shall be in effect from the date of the construction notice-to-proceed and continue in force until all financial interest ceases. The Wichita Airport Authority and the City of Wichita shall be named as additional insured on such policies, and all policies shall be written by insurers subject to LESSOR's reasonable approval.
- e. If at any time during the term of this Agreement, LESSEE desires to have LESSOR provide improvements on LESSEE's behalf, and LESSOR agrees to provide such improvements, the following process and procedures shall be followed.
- 1) LESSEE shall consult with LESSOR, and LESSOR shall then develop and provide to LESSEE a scope of work and a preliminary cost estimate for the construction improvements, including design services. Upon LESSEE's written acceptance of the scope of work and preliminary cost estimate, LESSOR shall proceed with design. At the conclusion of the design phase, an updated cost estimate will be provided to LESSEE. Upon LESSEE's written acceptance of the updated cost estimate, LESSOR shall proceed with bidding the work and, using bid values, provide a final cost estimate to LESSEE. Upon LESSEE's written acceptance of the final cost estimate, LESSOR shall invoice LESSEE and LESSEE will prepay the estimated costs. Should LESSEE not accept any cost estimate, this process will be terminated and LESSOR shall not proceed with the construction improvements, and will invoice LESSEE for the costs already incurred, including design and estimating work.
 - 2) If there are change orders required during the course of the construction improvements, LESSOR shall provide to LESSEE a description of the work along with a cost proposal from the contractor. Upon LESSEE's written acceptance of the cost proposal, LESSOR shall invoice LESSEE, and LESSEE will prepay the costs.
 - 3) Once the construction improvements are complete and final costs are known, LESSOR shall provide LESSEE a reconciliation of actual costs compared to prepayments made by LESSEE. If actuals costs exceed the prepayments, LESSEE will pay the difference to LESSOR. If the prepayments exceed the actual costs, LESSOR will reimburse LESSEE. The required reconciliation payment from one party to the other will be made within thirty (30) calendar days from the date of the reconciliation statement.
 - 4) All cost estimates and billing by LESSOR will include a twelve percent (12%) administrative fee. The fee will be applied to the total cost incurred by LESSOR in providing the construction improvements. The fee represents LESSOR's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component.
 - 5) LESSEE agrees to pay all billings from LESSOR within thirty (30) calendar days of billing. Failure of LESSEE to reimburse LESSOR for the invoiced amount shall constitute a default of this Agreement by the terms of Section 45 TERMINATION BY LESSOR.

f. For new construction, LESSEE shall:

- 1) Provide to LESSOR a detailed site plan, including utilities required for the project, and other required information required by LESSOR to submit an application to the FAA for a Section 163 determination per the FAA Reauthorization Act of 2018.
- 2) Provide LESSOR with surveyed coordinates and elevations by a licensed and qualified surveyor, with Code 1A Horizontal/Vertical accuracy tolerances as defined under *FAA Order 8260.19I, Appendix C*, Tables 1 and Table 2, or as may be amended for all proposed above-grade structures and improvements on the Premises for the purpose of LESSOR's submittal of *Form 7460-1 Notice of Proposed Alteration and Construction*; only commence construction following formal FAA notification of a "Favorable Determination of No Hazard," and with no "Notice of Presumed Hazard (NPH) determinations;"
- 3) Administer and observe on-site construction and/or design professionals to ensure compliance with the approved plans and specifications;
- 4) Submit to LESSOR for prior approval all proposed construction modifications, amendments or changes to the plans and specifications;
- 5) Install temporary security and/or construction barricade fence;
- 6) Repair or replace property damaged in the construction of the facilities and improvements by LESSEE, its contractors, agents or employees; and
- 7) Provide LESSOR, within thirty (30) calendar days following occupancy of the facilities, a complete reproducible set of as-built record drawings, along with a certification of project costs for all permanent improvements. Post construction documentation shall include a copy of all testing results and corrective actions taken.
- 8) Provide LESSOR all applicable data and information for LESSOR to submit to the FAA for regulatory determinations.

g. No construction, development or subsequent activities shall be allowed on the Premises causing adverse drainage issues such as erosion, blocking the flow of stormwater flow, or introducing stormwater flow across the leasehold of other Airport tenants. No stormwater runoff shall be allowed to leave the Premises except as may be allowed, and in the manner prescribed or approved, in advance by LESSOR and subject to the design of a licensed civil engineer.

h. Inaccurate or false certifications under this Section shall be a breach of this Agreement which the Parties agree may only be remedied by specific performance whenever discovered. LESSEE's obligation to cure deficiencies in the improvements to the Premises by performance in a good and skilled manner shall survive this Agreement.

- i. Additions or alterations must be designed and constructed in a manner that will not weaken or compromise the structural strength, or reduce the value or functionality of the Premises or existing improvements thereon. Any approvals issued under this Section shall be deemed approvals of the Wichita Airport Authority, as LESSOR, in its capacity as the property owner and landlord, but shall not be deemed approvals as required for local zoning codes, local building codes, or any other approval or permit required by the Sedgwick County Metropolitan Area Building and Construction Department. Notwithstanding any other indemnity provision, LESSEE shall indemnify and hold LESSOR harmless for any liability for regulatory or governmental approvals or the failure to obtain the same. LESSEE shall be responsible for obtaining all permits and approvals required for the construction, maintenance, operation and use of all Facilities on the Premises.
- j. LESSEE agrees to furnish a letter to LESSOR indicating that:
 - 1) The improvements have been completed in accordance with the plans and specifications;
 - 2) The improvements have been completed in a good and skilled manner;
 - 3) No liens have been filed, nor is there any basis for the filing of such liens with respect to the improvements;
 - 4) All improvements constituting a part of the project are located or installed upon the Premises; and
 - 5) The actual total project cost of the approved project.

23. CONSTRUCTION INSPECTIONS

LESSOR shall have the right at any reasonable time prior to the completion of any construction of facilities and improvements or future alterations and improvements thereto, to enter upon the Premises for the purpose of inspecting the construction thereof, to determine whether or not the improvements are being constructed substantially in accordance with LESSOR approved plans and specifications. If at any time during the progress of such construction, it is determined that the improvements are not being constructed substantially in accordance with LESSOR approved plans and specifications, upon receipt of written notice from LESSOR, LESSEE shall make or cause to be made such reasonable alterations as may be required to cause the improvements to substantially conform to the plans and specifications. However, LESSOR has no duty to undertake such inspections, and LESSOR shall not be held to any duty of care regarding such inspections, if conducted.

24. REMOVAL AND DEMOLITION

LESSEE shall not remove or demolish, in whole or in part, any improvements upon the Premises without the prior written consent of LESSOR, which may, at its discretion, condition such consent upon the obligation of LESSEE replacing the same by a reasonable improvement specified in such consent. LESSEE shall obtain from LESSOR written consent and conditions before commencing demolition. Failure to obtain this consent shall entitle the LESSOR to such compensation as is necessary to restore the affected improvements.

25. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

- a.** Title to the Premises and to all existing and future structures, facilities, improvements, and fixtures shall be, and shall remain, exclusively with LESSOR, the Wichita Airport Authority.
- b.** The term "fixtures", whenever used in this Agreement, shall be construed to include all fixed systems and equipment erected or installed upon the Premises, including but not limited to fencing, grading and pavement, underground wires, cables, pipes, building mechanical systems, conduits, drains and drainages, and all other property of every kind and nature which is permanently affixed to the Premises.
- c.** LESSEE may, without cost to LESSOR, furnish and install non-affixed furniture, movable partitions, decorations, systems, accessories, equipment, and tools necessary to conduct its business, which shall be defined as, and status retained as Personal Property. Title/ownership to non-affixed, or temporarily affixed, Personal Property shall remain with LESSEE.
- d.** All above ground storage tanks (AST) and dispensing facilities, equipment and systems, and auxiliary and ancillary appurtenances thereto shall be considered non-affixed, or temporarily affixed systems, accessories, equipment and tools, and LESSEE shall retain title/ownership as Personal Property.
- e.** All non-affixed furniture, movable partitions, decorations, systems, accessories, equipment, and tools shall retain their status as the LESSEE's Personal Property and shall be removed by LESSEE upon termination of the Agreement, unless permission to abandon the same is sought and obtained in writing from LESSOR.
- f.** All facilities, structures, improvements, alterations, additions, and fixtures permanently affixed to the Premises, shall remain upon and be surrendered with the Premises as a part thereof, on any termination or expiration of this Agreement, for any cause, and shall remain the property of LESSOR.

26. LIENS

- a.** LESSEE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any improvements thereon. Should actions or inactions of LESSEE cause any lien to be placed on the Premises or any improvements thereon, LESSEE shall bond against or discharge the same within thirty (30) calendar days after actual notice of the same from any source, whether from LESSOR or otherwise, and provide written proof of discharge or bonding to LESSOR within that time. This obligation includes, but is not limited to, tax liens, and liens arising out of or because of any financing, construction or installation performed by or on behalf of LESSEE or any of its contractors or subcontractors upon LESSEE'S Premises, or due to the performance or lack of performance of any work or labor to it or them at said Premises, or the furnishing of any materials to it or them for use at said Premises.
- b.** LESSEE acknowledges that LESSEE acquires no equity interest in the Premises, notwithstanding its construction of improvements on the Premises. Although such improvements accrue to LESSOR, improvements are for the benefit and enhancement of LESSEE'S use of the Premises. LESSEE has no agency authority to act on behalf of LESSOR for any such construction. LESSEE may not mortgage or pledge as collateral its leasehold interest herein without the prior written consent and conditions of LESSOR.
- c.** LESSOR may consent, upon LESSEE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as security for financing of LESSEE'S activities on the Premises, which assignment is intended to be a present transfer to such lender of all of LESSEE'S rights to collect and receive rents and charges from approved customers, users, operators, sublessees and permittees. Lender(s) shall have no rights to assign this Agreement without the prior written consent of the LESSOR as required under Section 38 ASSIGNMENT. Upon LESSEE'S written consent, LESSOR agrees to give Lender(s) notice of any default or termination of the Agreement, and allow Lender(s) the same opportunity as the LESSEE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the LESSEE of its obligations under this Agreement.

27. TAXES, LICENSES AND PERMITS

- a.** The Parties acknowledge that new facilities or improvements to the leasehold are not eligible for a sales tax exemption certificate on materials and furnishings directly through the Wichita Airport Authority. New facilities or improvements to the leasehold must be financed with the proceeds of Airport Special Facilities Revenue Bonds to qualify for a sales tax exemption certificate on labor, materials and furnishings as allowed under State law. In the event such bonds are issued, the Parties agree to amend this Agreement as necessary to provide for the issuance and payment of such bonds.

- b. LESSEE agrees to pay all present and future taxes, or in lieu of taxes, special assessments now or hereafter levied or assessed upon: 1) the Premises and facilities; 2) the property owned or possessed by LESSEE and situated on the Premises; and 3) LESSEE's interest in or use of the Premises. LESSEE shall defend, indemnify and save LESSOR, the Wichita Airport Authority, and the City of Wichita, Kansas harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.
- c. LESSEE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature lawfully due and applicable to its operation on the Premises. LESSEE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. LESSEE shall keep current all Federal, State or local licenses, operating certificates or permits required for the conduct of its operations. LESSEE represents and warrants to LESSOR that it has obtained all licenses, franchises, operating certificates, or other agreements or permits necessary to operate LESSEE'S operation in accordance with the terms of this Agreement, and LESSEE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.
- d. LESSEE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the leased Premises or upon any taxable interest of LESSEE acquired in this Agreement, or any taxable possessory right which LESSEE may have in or to the leased Premises, including any improvements or facilities located on the Premises.
- e. LESSEE shall pay all lawful taxes and assessments on taxable property, real or personal, owned by LESSEE in and about said Premises.
- f. Nothing in this Section shall prevent LESSEE from contesting the legality, validity or application of any such tax or assessment to the full extent LESSEE may be lawfully entitled so to do.

28. MAINTENANCE AND REPAIR BY LESSOR

LESSOR shall be responsible for maintenance, repair and replacement of public access and common use paved surfaces and subgrades, street lighting, airfield lighting system, taxiway connectors, and storm drainage systems on the Airport not within or upon the Premises.

29. MAINTENANCE AND REPAIR BY LESSEE

- a.** LESSEE shall maintain and keep in good repair, at its sole cost and expense, the interior and exterior of Premises and improvements placed thereon, including all structures, systems, pavements, drainage systems, landscaping, fixtures and appurtenances thereto in its original condition, subject to reasonable wear and tear, and keep the Premises free of trash, debris, safety hazards, and obstructions.
- b.** Should LESSEE not meet the maintenance and repair obligations for all improvements, subject to the notice and cure rights set forth herein, LESSOR may, but is not required, to accomplish the needed repairs by Airport staff or a contract with a third party, with such repairs being made at LESSEE's expense. A twelve percent (12%) administrative fee shall be charged on any task that is performed by LESSOR or its agent on behalf of LESSEE upon thirty (30) calendar days prior written notice of its intent to do so. The fee shall be applied to the total cost incurred by LESSOR in performing the task. The fee represents LESSOR's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. In case of emergency action taken in order to protect against personal injury or property damage but not limited to, for which no notice is necessary, LESSOR shall charge the same cost to the expense of LESSEE and a twenty percent (20%) administrative fee.
- c.** Commencing on the first anniversary of the Agreement Commencement Date, and by no later than the anniversary date of each year thereafter during the Term of this Agreement, LESSEE shall provide LESSOR with a "Prior Year's Maintenance Report" detailing maintenance and repairs performed by LESSEE, or LESSEE'S contractor(s), to and upon the Premises. The Prior Year's Maintenance Report shall primarily focus on major structural systems and components, including but not limited to: pavements, utilities, building structures, roofs, and heating/ventilation/air conditioning (HVAC), plumbing, and electrical systems. The Maintenance Report shall list and identify, by line-item, all maintenance and repairs, date maintenance or repairs were performed, and the actual cost of maintenance or repairs. At LESSEE's discretion, individual maintenance or repair items valued at less than \$2,000, or minor maintenance or repairs performed by LESSEE's own employee's need not be included in the Maintenance Report.

30. FACILITY CONDITION ASSESSMENT

On the fifth anniversary of the Agreement Commencement Date, and by no later than the anniversary date of each fifth year thereafter during the Term of this Agreement, the LESSEE shall provide the LESSOR with a "Condition Assessment Report" of the leased Premises and site improvements thereon, prepared by an appropriately licensed contractor, engineer or architect ("A/E"), and licensed to do business in the State of Kansas. This Condition Assessment Report shall address the current condition, the contractor's or A/E's professional opinion of the useful life remaining of the structures and systems, and the contractor's or A/E's professional opinion of repairs, replacements, or refurbishments recommended to maintain the operationally useful state and condition of the Premises. When appropriate and relevant, the

Condition Assessment Reports shall reference and incorporate Prior Year's Maintenance Reports as defined and described in Section 29. Condition Assessment Reports shall primarily focus on major structural systems and components, including but not limited to: pavements, utilities, building structures, roofs, and heating/ventilation/air conditioning (HVAC), plumbing, and electrical systems.

31. LANDSCAPING

- a.** LESSEE shall maintain landscaping that may include lawn, shrubbery, trees, bushes, irrigation systems if any, and other plantings on the Premises. LESSEE agrees to maintain and/or replace such landscaping installations at least seasonally throughout the Term of this Agreement or any extension thereof should any landscaping fail to survive in a manner aesthetically pleasing to LESSOR, a judgment which is to be exercised with reasonable discretion.
- b.** If LESSEE needs to replace or desires to implement new landscaping then LESSEE agrees to submit to the LESSOR all proposed landscaping plans designs for LESSOR review and approval. Such landscaping shall be in accordance with the Airport's design guidelines included in the Airport's Standard Operating Procedures, in effect at that time. LESSEE shall not install new landscaping such as shrubbery, trees, bushes, and other plantings without the prior approval by LESSOR. LESSEE shall not install any landscaping that might create a wildlife food source, habitat or hazard to aircraft operations.

32. SNOW AND ICE CONTROL

- a.** LESSEE shall be responsible for all snow and ice removal on the Premises. Aircraft parking ramps and the Air Operations Area (AOA) within the Premises shall be maintained to a winter surface condition safe for aircraft operations, and safe for customers and employees moving and working on the ramp. At no time shall LESSEE engage in snow and ice removal beyond the Premises without the prior approval of LESSOR.
- b.** Snow piles, windrows or other accumulations of snow shall not:
 - 1)** Be closer than twenty five feet from any security fence;
 - 2)** Block any access gates or controls;
 - 3)** Block or impede any taxiway or taxi lane;
 - 4)** Impose an obstruction within the object free area of any taxiway or taxi lane;
 - 5)** Block or impede the performance of any navigational aid;
 - 6)** Infringe upon, block or interrupt the business of other airport tenant leaseholds.
- c.** Snow piles and accumulations requiring removal may be stored on approved paved or non-paved areas as authorized in advance by LESSOR.

- d. Only Federal Aviation Administration (FAA) approved dry and liquid chemicals may be used for de-icing or snow removal on aircraft operating surfaces, as set forth in Advisory Circular 150/5200-30, current edition, or as may be amended, *Airport Winter Operations and Safety*, Section 4-6 *Approved Chemicals*, current edition, or as may be amended.
- e. The use of snow and ice removal contractors may be authorized subject to prior written approval by LESSOR, and subject to acceptable completion of contractor employee training, and other reasonable safety requirements and standards that LESSOR may impose, including but not limited to compliance with Airport Rules and Regulations, and Standard Operating Procedures. All such snow and ice removal contractors shall maintain a general liability insurance policy of not less than \$1,000,000 limit, naming LESSEE, LESSOR and the City of Wichita as additional insureds.
- f. LESSOR shall be responsible for snow and ice removal on paved surfaces of the Airport not within the Premises.

33. FIRE EQUIPMENT AND SYSTEMS

- a. LESSEE shall furnish and maintain at its sole expense on the Premises, fully and continuously operational heat and/or smoke detection devices, fire suppression systems, and portable fire extinguishing equipment as may be required by City and State codes and insurance underwriters.
- b. LESSEE shall immediately notify LESSOR if any heat and/or smoke detection devices, or fire suppression systems are out of operation for more than twenty-four (24) hours.
- c. LESSEE shall maintain the sole duty and obligation to insure that all heat and/or smoke detection and fire suppression systems are inspected, maintained, and functional in accordance with local and state fire codes.

34. EXTERIOR SIGNS AND ADVERTISING

- a. LESSEE agrees that no exterior signs or advertising material shall be erected on the Premises or on any improvement or facility on the Premises unless the design and layout of such signs and advertising material, together with the materials and method of construction of such signs and advertising material, shall have been approved in advance in writing by LESSOR, which approval shall not be unreasonably withheld or unduly delayed.

- b. LESSEE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated upon any non-leased Premises of the Airport property, any signs, banners, or other similar devices for its own business, or the business of others. This provision shall not have the effect of limiting or restricting LESSEE's right to enter into an agreement with LESSOR's authorized and permitted marketing, advertising or signage agency for the display of informational, marketing or advertising media at approved designated locations on Airport property.
- c. LESSEE shall have no right to erect or install or cause or consent to be erected or installed any commercial outdoor advertising by an outdoor commercial advertising agency.

35. PORTABLE STORAGE CONTAINERS/STRUCTURES

- a. Unless specifically approved in writing, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure. Unless specifically approved, and under conditions specified by LESSOR, LESSEE shall not place or allow to be placed upon Premises, any type of portable or temporary structure, trailer, mobile home, modular structure or device.
- b. LESSOR will not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

36. ENVIRONMENTAL SITE ASSESSMENT

- a. An environmental site assessment, as described in b. or c. of this Section 36, shall be conducted, at LESSEE's expense, by an environmental consultant satisfactory to the LESSOR within sixty (60) calendar days prior to the cancellation, termination or assignment of this Agreement, and a copy of the report shall be promptly provided to LESSOR.
- b. If any of the conditions listed below are met, a Phase-II environmental site assessment is required and shall conform to ASTM E-1528 and applicable procedures outlined in the LESSOR's Standard Operating Procedure No. 43 – Guidelines for Conducting Phase-I and Phase-II Environmental Site Assessments. Conditions requiring a Phase II are:
 - 1) Operations that had or currently are utilizing or storing a material meeting regulation under HAZARDOUS MATERIAL- 49 Code of Federal Regulations.
 - 2) Operations that had or currently producing or generating a product(s) defined under HAZARDOUS WASTE – 40 Code of Federal Regulations.
 - 3) Stored bulk quantities (combined greater than 1,320 gallons) of petroleum fuels, oils, and lubricants.

- c. Should the conditions listed above for a Phase-II site assessment not be met, a Phase-I environmental site assessment shall be developed and conform to ASTM E-1527 and applicable procedures outlined in the LESSOR's Standard Operating Procedure No. 43 – Guidelines for Conducting Phase-I and Phase-II Environmental Site Assessments.
- d. If any contamination of the Premises has occurred other than LESSOR's negligence, then LESSEE shall be required to re-establish the Premises in accordance with applicable law in a timely manner and reasonably acceptable to LESSOR. Furthermore, LESSEE shall remain liable for substances released by LESSEE or its agents, contractors, invitees or employees in, on under or in the vicinity of the Premises to the extent such substances are not yet regulated but which are known to be under evaluation by applicable government authorities for regulation.
- e. Nothing in this Section shall be construed to hold LESSEE liable in any way for any environmental impact or release of Hazardous Substances affecting the Premises that occurs by reason of the migration, release, discharge or flow from other verifiable and documented off-site contamination sources that are not attributable to LESSEE's activity on the Premises.

37. ENVIRONMENTAL COVENANTS

- a. LESSEE hereby covenants that it shall not cause or permit any Hazardous Substances to be placed, held, located, or disposed of, on, under or at the Premises or within the vicinity, shown on the attached Exhibit "A", other than in the ordinary course of business and in compliance with all applicable laws.
- b. The term "Hazardous Substance" as used in this Agreement shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to those substances, materials or wastes regulated now or in the future under any of the statutes or regulations listed below and any and all of those substances included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "hazardous chemical substance or mixture", "imminently hazardous chemical substance or mixture", "toxic substances", "hazardous air pollutant", "toxic pollutant" or "solid waste" in the statutes or regulations listed below. Hazardous Substances shall also mean any and all other similar terms defined in other federal state and local laws, statutes, regulations, orders or rules and materials and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment or which are classified as hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

- c. In addition, a Hazardous Substance shall include: a “Hazardous Substance”, “Hazardous Material”, “Hazardous Waste”, or “Toxic Substance” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq., or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.
- d. In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to LESSOR, LESSEE hereby agrees to indemnify and hold harmless LESSOR and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys’ fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, LESSOR or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Lease Agreement of any Substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys’ fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called “Superfund” or “Super lien” laws), if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the LESSEE, or persons within the control of the LESSEE, its officers, employees, agents, contractors, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or located on the Premises by, the LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).
- e. If, during the Term of this Agreement, LESSEE receives any notice of:
 - 1) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any Substance (hazardous or otherwise) on the Premises or in connection with the LESSEE’s operations thereon; or
 - 2) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting LESSEE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the “EPA”) or the Kansas Department of Health and Environment (“KDHE”)), LESSEE shall immediately notify LESSOR in writing of said notice.

- f.** LESSOR shall have the right, but not the obligation, and without limitation of LESSOR's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any Substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any Substance (hazardous or otherwise) or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against LESSEE and/or which, in the reasonable judgment of LESSOR, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of LESSEE or if such circumstances result from a Substance (hazardous or otherwise) owned by, or located on the Premises by, LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the LESSOR in the exercise of any such rights shall be payable by LESSEE, within 15 calendar days of written demand by LESSOR.
- g.** If an event of default shall have occurred and be continuing, LESSEE at the request of LESSOR shall periodically perform, at LESSEE's expense, an environmental audit, and if reasonably deemed necessary by LESSOR, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by LESSEE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to LESSOR, and all environmental audits and environmental risk assessments must be reasonable satisfactory to LESSOR. Should LESSEE fail to perform any such environmental audit or risk assessment within 90 calendar days of the written request of LESSOR, LESSOR shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by LESSOR in the exercise of such rights shall be payable by LESSEE on demand.
- h.** Neither LESSEE nor LESSOR shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls, or any Substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. LESSEE shall defend, indemnify, and save LESSOR and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against LESSEE by any person, as a result of the presence of said Substances, and the costs of any removal or compliance with such regulations, if said Substance was installed by LESSEE, or persons within its control.
- i.** Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, LESSOR hereby agrees to indemnify and hold harmless LESSEE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, LESSEE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Agreement and the period prior to the Term of this Agreement

of any Substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by LESSEE, or persons within the control of LESSEE, its officers, employees, agents, invitees and/or licensees, or if such Substance (hazardous or otherwise) was owned by, or placed upon the Premises by, LESSEE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by LESSOR).

- j. Environmental compliance shall not be limited to those items noted within this Agreement but shall include any current or future federal, state, or local law, statute or regulation, that may be required of LESSEE's operation (storage or use of Substances (hazardous or otherwise), activities of LESSEE's employees or contracted vendor's etc.). LESSEE shall provide LESSOR upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.
- k. The provisions of this Section shall survive the termination of this Agreement.

38. ASSIGNMENT

- a. Except for an intra-company assignment, re-organization, or transfer to a parent "holding" company or subsidiary, LESSEE shall have no right to assign, delegate, or transfer its tenancy, or any of its rights or duties pursuant to this Agreement without the prior written consent of LESSOR. For purposes of this Section, an assignment, transfer, or delegation shall include any transaction involving a change of twenty-five percent (25%) or more in the ownership interest in the LESSEE entity. Prior to LESSOR's consideration of any assignment, LESSOR shall evaluate, and then consent or withhold consent of assignment to any proposed assignee based, in part, on the following: 1) historically successful operational experience; 2) capability and willingness to satisfy the requirements of financial capabilities; and, 3) creditworthiness and credit history of the proposed assignee. Any assignment, transfer of ownership interest or delegation so made by LESSEE, and so permitted by LESSOR, shall be subject to all terms, conditions, and other provisions of this Agreement. Any attempted assignment, transfer of ownership interest, or delegation in violation of this Section shall be void and have no force or effect whatsoever, and at LESSOR's sole discretion, is grounds for Termination by LESSOR under Section 45 TERMINATION BY LESSOR of this Agreement.

39. SUBLEASING, PERMITTING AND CONTRACTING

LESSEE shall not sublease, rent, or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial or non-commercial operation on the Premises without the prior written consent of LESSOR, and then consent may be granted by LESSOR only under the following conditions:

- 1) All sublease(s) must comply with Section 15 PROHIBITED SERVICES AND USE OF PREMISES of this Agreement and shall be reviewed for compliance by LESSOR to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by LESSOR.
- 2) LESSEE must keep current records on file and available for LESSOR's inspection that describes the nature, and documents the legitimacy of the sublessee's business, including all current municipal, state, or local licenses or permits required for the conduct of sublessee's business.
- 3) LESSEE hereby agrees that it shall incorporate language acceptable to LESSOR into all of its sublease agreements, placing on any sublessee and that sublessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind LESSEE and its use of the facility through this Agreement. LESSEE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure sublessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the sublessee shall never obtain rights in the Premises greater than those held by LESSEE under this Agreement, or as may be amended. Any sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of this Agreement, irrespective of sublessee's state of compliance with the terms of its sublease.
- 4) LESSEE shall at all times during the term(s) of approved sublease(s), remain responsible to LESSOR for the compliance of its sublessees with the terms and conditions of any approved sublease and with this Agreement. LESSOR shall look to LESSEE directly to satisfy any failure of sublessee to comply with these documents.
- 5) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of LESSOR shall be required for each sublease permit or subcontract executed by LESSEE.
- 6) Any arrangements and terms must be in the form of a written instrument, must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. LESSEE shall submit a copy of such proposed instrument at the time of requesting consent of LESSOR. LESSEE shall not sublease, rent or permit any persons, firms or corporations to occupy any part of a leased Premises, or to provide any type of commercial or non-commercial activity, operation or services, or not specifically allowed

under this Agreement, on the leased Premises without having first presented LESSOR with a proposed sublease agreement or operating permit for review, and received the prior written approval of LESSOR.

40. LIABILITY INSURANCE

- a.** LESSEE shall procure, maintain and carry, at its sole cost, in accordance with and for the Term of this Agreement all insurance, as required per the amounts as set forth in this Section. Insurance shall be furnished by a company meeting the reasonable approval of LESSOR. Policy deductible amounts also require reasonable approval of LESSOR.
- b.** Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to LESSOR in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by LESSOR, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by LESSOR prior to occupancy. LESSOR retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in LESSEE'S use of the Premises. All policy deductibles shall be shown on the certificate of insurance and meet the approval of LESSOR.
- c.** The failure of LESSOR to reject LESSEE'S proffered insurance shall not be deemed to constitute an acceptance by LESSOR of deficient insurance coverage. If LESSEE fails to procure or maintain any of the specified coverages, LESSOR has the right, but not the obligation, to secure the coverage and charge the cost to LESSEE along with a 20% administrative fee.
- d.** LESSEE shall be responsible for determining the types and limits of insurance coverage required by any approved sublessee, permittee or contractor of LESSEE commensurate with the type of activity and associated risk levels. At a minimum, any sublessee shall carry Workers' Compensation, general liability (minimum of \$1,000,000 per occurrence) and automobile liability (minimum of \$500,000 combined single limit). LESSEE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the sublessee's general liability policy.
- e.** The requirements, procurement and carrying of the required insurance shall not limit any of LESSEE's obligations or liability under this Agreement or as a matter of law.

f. Where “minimum limits” of insurance are specified in this Section, such minimum insurance limits are required and considered by LESSOR to be the lowest insured amounts acceptable under this Agreement. LESSEE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at LESSEE’s determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

g. Insurance shall include the following terms, conditions and minimum limits:

1) WORKERS’ COMPENSATION

LESSEE shall maintain Workers’ Compensation insurance to cover the statutory requirements of the Workers’ Compensation laws of the State of Kansas for its operations on the Premises, and when applicable, to Federal Laws and Voluntary Compensation and Employer’s Liability (including occupational disease) coverage.

2) AUTOMOBILE LIABILITY

LESSEE shall maintain automobile insurance, which shall include all owned, non-owned and hired automobiles used on the Premises, and shall have minimum bodily injury and property damage limits as outlined herein.

Combined Single Limit	\$1,000,000 Each Accident
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3) COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain commercial general liability insurance on an occurrence form which shall include on-going operations, product/completed operations (minimum of two years following the project completion) and personal and advertising injury, and liability assumed under contract. Minimum limits, as outlined herein, shall be:

Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds.

4) HANGARKEEPERS LIABILITY COVERAGE (**NOTE:** *Required under this Agreement only if aircraft not owned by LESSEE are stored on Premises.*)

LESSEE shall maintain Hangarkeepers liability coverage. Minimum limits, as outlined herein, shall be:

Annual Aggregate Limit	\$5,000,000
Each Occurrence Limit	\$1,000,000

5) POLLUTION LIABILITY COVERAGE

LESSEE shall provide pollution liability coverage with a minimum limit of:

Aggregate Limit	\$2,000,000
Each Claim	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this pollution liability coverage.

- h. LESSEE agrees that in the event of future changes in the law or upon notice by LESSOR, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.
- i. LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of certificates, evidencing that such insurance is in full force and effect, and stating the terms thereof. LESSEE shall not have access to the Premises until the Commencement Date and only after LESSEE provides all certificates of insurance satisfactory to LESSOR. LESSEE shall provide LESSOR updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for termination of this Agreement as set forth in Section 45 TERMINATION BY LESSOR.

41. ALL RISK PROPERTY INSURANCE

- a. LESSEE, at its expense, throughout the Term of this Agreement, shall cause any facilities, structures, fixtures and improvements on the Premises to be insured against loss or damage by fire or other casualty equal to the full replacement value thereof and by an all risk coverage policy furnished by a company licensed to do business in Kansas. Such policy shall not exclude, or in the alternative, shall carry full coverage endorsements for damage from tornado, hail, and sewer backup, and LESSEE shall furnish LESSOR a certificate evidencing such insurance. All insurance proceeds shall be applied to replace, restore, rehabilitate or reconstruct LESSOR's interest in the insured facilities, subject to the provisions governing damage or destruction found in Section 51 DAMAGE OR DESTRUCTION. Any remaining proceeds shall then be made available to LESSEE for LESSEE-owned (personal) property. LESSEE agrees, prior to the commencement of the Agreement, to provide LESSOR with copies of all policies or certificates evidencing that such insurance is in full force and effect, and stating the terms thereof. LESSEE shall not have access to the Premises until the Commencement Date and only after LESSEE provides all certificates of insurance satisfactory to LESSOR. Additionally, underlying policies will be made available for onsite inspection by the LESSOR or LESSOR's designee at the corporate headquarters of the LESSEE.

- b.** No self-insurance nor large deductible policies will be accepted for any of the required coverages.
- c.** LESSEE shall provide LESSOR updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the coverage required in this Section for the ensuing twelve (12) month period. Failure to continuously maintain satisfactory insurance policies in force shall constitute grounds for termination of this Agreement.
- d.** LESSEE shall be solely responsible for obtaining insurance policies that provide coverage for losses or damage of LESSEE-owned (personal) property. LESSOR shall not provide such insurance coverage for LESSEE-owned (personal) property or be responsible for payment of LESSEE's cost for such insurance.

42. SUBROGATION

- a.** LESSOR hereby waives any and all rights of recovery against LESSEE for or arising out of damage or destruction of the building, or the demised Premises, or any other property of LESSOR, from causes then included under any of LESSOR's property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of LESSEE, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of LESSOR coverage.
- b.** LESSEE hereby waives any and all rights of recovery against LESSOR for or arising out of damage to or destruction of any property of LESSEE from causes then included under any of LESSEE's property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of LESSOR, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

43. INDEMNITY

- a.** To the extent allowed by law LESSEE, shall protect, defend and hold LESSOR and the City of Wichita and its officers, elected officials, agents, employees, contractors, subcontractors, licensees and invitees, completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), or other liability of any nature whatsoever arising out of or incident to the use or occupancy of the Premises or the acts or omissions of LESSEE's officers,

stockholders, directors, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSOR. LESSOR shall give to LESSEE reasonable notice of any such claims or actions.

- b. To the extent allowed by law, LESSOR shall protect, defend and hold LESSEE, its officers, stockholders, directors, members, managers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), or other liability of any nature whatsoever arising out of or incident to the use or occupancy of the Premises or the acts of omissions of LESSOR's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of LESSEE. LESSEE shall give LESSOR reasonable notice of any such claims or actions.
- c. Should LESSEE, its employees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, state or local law, regulation or ordinance, and should LESSOR be cited for a fine or penalty for such violation, LESSEE agrees to reimburse LESSOR for any monetary fine or penalty which may be imposed on LESSOR. However, nothing herein shall prevent the LESSEE from contesting the legality, validity or application of such fine or penalty to the full extent LESSEE may be lawfully entitled, nor require LESSOR to pursue such a contest on LESSEE's behalf.
- d. The provisions of this Section shall survive the expiration or termination of this Agreement to the extent that they relate to liabilities, losses, suits, claims, judgments, fines or demands arising from or incident to events occurring during LESSEE'S occupancy of the Premises. LESSEE shall use counsel reasonably acceptable to LESSOR in carrying out its obligations in this Section.

44. LOSS OF PERSONAL PROPERTY

Any personal property of LESSEE or its officers, employees, contractors, vendors, customers, or business invitees, placed in or upon the Premises shall be at the sole risk of LESSEE, and LESSOR shall not be responsible or liable for any loss, damage and replacement thereto, unless caused by LESSOR, its officers, agents, or employees, and LESSEE waives all rights of subrogation against recovery from LESSOR for such loss or damage.

45. TERMINATION BY LESSOR

- a.** LESSOR, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSEE written notice in the event of default by LESSEE under this Agreement failing to be resolved in less than sixty (60) calendar days after LESSEE's receipt of written notice of such event of default and opportunity to cure from LESSOR, upon or after the happening of any one of the following events:
- 1) LESSEE shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against it and LESSEE is thereafter adjudicated bankrupt pursuant to such proceedings;
 - 2) A court shall take jurisdiction of LESSEE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
 - 3) Receiver of LESSEE's assets shall be appointed;
 - 4) LESSEE shall be divested of its estate herein by other operation of law;
 - 5) LESSEE shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSEE are to be performed, kept or observed.
- b.** If any such condition or default cannot reasonably be corrected within the sixty (60) calendar day period, and LESSEE has demonstrated due diligence with respect to curing said default, then, at LESSOR's sole discretion, such cure period may be extended for consecutive periods of thirty (30) calendar days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) calendar day extension then in effect.
- c.** Acceptance of rent by LESSOR for any period or periods after a notice of default is issued by LESSOR of any of the obligations, terms, warranties and conditions herein contained to be performed, kept and observed by LESSEE shall not be deemed a waiver of any other right on the part of LESSOR to terminate this Agreement for failure by LESSEE so to perform, keep and observe any of the obligations, terms, warranties, or conditions hereof to be performed, kept and observed. No waiver of default by LESSOR of any of the obligations, terms, warranties or conditions hereof to be performed, kept and observed by LESSEE, shall be construed to be or act as a waiver of any subsequent default of any of the obligations, terms, warranties or conditions herein contained to be performed, kept and observed by LESSEE.

46. TERMINATION BY LESSEE

- a.** LESSEE, in addition to any other rights to which it may be entitled by law or otherwise, may terminate this Agreement by giving LESSOR written notice in the event of default by LESSOR under this Agreement continuing for more than sixty (60) calendar days after LESSOR's receipt of written notice of such event of default and opportunity to cure from LESSEE, upon or after the happening of any one of the following events:
- 1) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Airport or any major part thereof for aeronautical purposes and the remaining in full force of such permanent injunction for a period of at least one hundred and eighty (180) calendar days;
 - 2) Inability of LESSEE to use, for a period in excess of one hundred and eighty (180) calendar days, the Airport or any part of the facility because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy;
 - 3) LESSOR shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of LESSOR are to be performed, kept or observed, then:
 - i. LESSEE may give LESSOR written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) calendar days after receipt of such notice by LESSOR, LESSEE may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) calendar days in the same manner and to the same effect as if it were the expiration of the Term, unless such condition or default cannot reasonably be corrected within the sixty (60) day period and LESSOR has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 calendar days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the thirty (30) day extension then in effect;
 - 4) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict LESSEE for a period of one hundred and eighty (180) calendar days from operating on and within the facility;
 - 5) In the event of destruction of the facilities, improvements, or the demised Premises as more fully described in Section 51 DAMAGE OR DESTRUCTION.

47. GRANTING OF EASEMENTS

LESSEE shall not grant easements, encumbrances, licenses and other rights or privileges in the nature of easements with respect to any land on the Airport, or release existing easements, licenses, right-of-ways and other rights or privileges; and, LESSEE agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by LESSEE of: a copy of the instrument of grant or release or of the agreement or other arrangement; and, a written application signed by LESSOR requesting execution and delivery of such instrument, provided that, such grant or release is not detrimental to the proper conduct of the business of LESSEE, and such grant or release will not impair the effective use or interfere with the efficient and economical operation of the facilities. LESSEE shall not request any payment or other consideration for such execution, the same being amply supported by the promises exchanged in this Agreement. Any payments or other consideration received by LESSOR for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of LESSOR. The obligations of this Section shall survive termination of this Agreement.

48. RULES AND REGULATIONS

- a. LESSEE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Wichita Airport Authority or the City of Wichita, Kansas, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Airport or LESSEE's operations conducted hereunder.
- b. LESSOR shall not be liable to LESSEE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall LESSEE be entitled to terminate this Agreement nor be entitled to seek any damages from LESSOR by reason thereof unless exercise of such authority shall so interfere with LESSEE's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 46 TERMINATION BY LESSEE.

49. MINIMUM STANDARDS FOR AERONAUTICAL ACTIVITIES

LESSOR may, with due notice, from time-to-time, adopt and enforce reasonable Minimum Standards for Aeronautical Activities on the Airport, and amendments thereto, and LESSEE agrees to observe and comply with the same. However, any Minimum Standards which may be developed and promulgated, and thereafter during the Term of this Agreement, shall not have the effect of imposing upon LESSEE the requirements of additional facilities, services or standards beyond those set forth after the Commencement Date of this Agreement.

50. ENCROACHERS, TRESPASSERS AND OTHER THIRD PARTY HAZARDS

LESSEE shall lawfully remove, or cause to be removed by LESSOR or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, state or local government, or who are not on the Premises for legitimate purposes.

51. DAMAGE OR DESTRUCTION

In the event that facilities or improvements on the Premises are damaged or destroyed in whole or in part by fire, lightning or any other peril or other casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and LESSEE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as LESSEE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be first applied to cover the cost of such repairs or restoration. LESSOR may elect Facility Rent abatement based on the proportion of the facility not available for LESSEE's use. In alternative, LESSEE may be released from this Agreement upon payment of all demolition and removal costs for damaged or destroyed improvements and payment therefor at the fair market value of the improvements prior to the damage or destruction.

52. CONDEMNATION

- a. If, during the Term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, LESSEE shall, within fifteen (15) calendar days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify LESSOR in writing as to the nature and extent of such condemnation and whether it is practicable for LESSEE to acquire or construct substitute improvements, or whether LESSEE shall elect to terminate this Agreement.
- b. If LESSEE shall determine that such substitution is practicable and desirable and LESSOR agrees thereto, LESSEE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the Parties in pro-rata distributions as their interests may appear based upon Agreement Term remaining and the fair market value of each Party's interest at the time the proceeds are received.

- c. If LESSEE shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any net proceeds shall be distributed to the Parties in pro-rata distributions as their interests may appear based upon the Agreement Term remaining, and the fair market value of each Party's interest at the time the proceeds are received.
- d. LESSOR shall cooperate fully with LESSEE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event shall LESSEE or LESSOR voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other Party to this Agreement.

53. MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that LESSOR determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede and preempt this Agreement and LESSEE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by LESSOR to fully comply with federal grant assurances and directives, and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of LESSEE hereunder. The Director of Airports is authorized by LESSOR to execute amendments to this Agreement on behalf of LESSOR to amend this Section.

54. NONDISCRIMINATION

LESSEE agrees that it shall not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, disability, age (except where age is a bona fide occupational qualification), national origin or ancestry in its operations or services, and its use or occupancy of property under this Agreement. LESSEE agrees to comply with all applicable provisions of federal and state laws, regulations, or executive orders prohibiting discriminatory conduct.

55. GENERAL PROVISIONS

Full Authority. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they represent.

Counsel. The Parties hereto acknowledge that they have read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

Brokerage Fees. The LESSOR will not pay brokerage fees to brokers representing LESSEE. All brokerage fees shall be the responsibility of the LESSEE.

Operation of Airport by the United States of America. This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

14 CFR Part 77 of Federal Aviation Regulations. LESSEE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. LESSEE by accepting this Agreement expressly agrees for itself, its successors and assignees, it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises which shall exceed such maximum height as may be stipulated by LESSOR. All applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by LESSOR. In the event the aforesaid covenants are breached, LESSOR reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of LESSEE and without liability to LESSOR.

Airspace. There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of LESSOR shall result from the exercise of this right.

Easement for Flight. LESSEE releases LESSOR from any present or future liability whatsoever and covenants not to sue LESSOR for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed LESSOR shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. LESSOR reserves these

rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, airport or airport-related operations at or otherwise associated with use of the Airport. LESSEE accepts the Premises subject to the risks and activities hereinabove described.

Airport Hazards. LESSEE by accepting this Agreement agrees for itself, its successors and assigns, that it shall not make use of the Premises in any manner which may interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this Agreement provision is breached, LESSOR reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of LESSEE without liability to LESSOR of any kind.

Federal Aviation Administration (FAA) Requirements. LESSOR and LESSEE agree that the requirements of the FAA set out below are approved by both Parties, and if applicable, LESSEE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

- (a) LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Land that in the event Facilities are constructed, maintained or otherwise operated on the Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such Facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- (b) LESSEE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the Land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Facilities, (2) that in the construction of any improvements on, over, or under such Land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that LESSEE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- (c) LESSEE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity

covered by this subpart. LESSEE assures that it shall require that its covered suborganizations provide assurances to LESSEE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- (d) Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958. Rights granted under the Agreement are nonexclusive and that LESSOR reserves the right to grant similar rights and privileges to other tenants and operators in accordance with 49 USC 47107 – Section 308 (a) of Federal Aviation Act of 1982.
- (e) LESSEE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that LESSEE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
- (f) LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of LESSEE in this regard.
- (g) LESSOR reserves the right to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of LESSEE, and without interference or hindrance.
- (h) LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent LESSEE from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of LESSOR, would limit the usefulness of the Airport or constitute a hazard to aircraft or navigable airspace.
- (i) During time of war or national emergency LESSOR shall reserves the right to enter into any agreement with the United States Government for military use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.
- (j) The rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.
- (k) There is hereby reserved to LESSOR, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

Subordination to Agreements with the U.S. Government. This Agreement is subordinate to the provisions of any agreements heretofore or hereafter made between LESSOR and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to LESSOR for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. LESSOR covenants that it has no known existing agreements with the United States Government in conflict with the express provisions hereof.

Non-Waiver of Rights. No waiver or default by either Party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other Party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other Party.

Captions. The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Severability and Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either LESSOR or LESSEE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this Agreement.

Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

Incorporation of Required Provisions. The Parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

Non-Liability of Agents and Employees. No manager, member, officer, stockholder, director, agent or employee of either Party to this Agreement shall be charged personally, or held contractually liable by or to the other Party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto where permitted by this Agreement.

Time of Essence. Time is of the essence in this Agreement.

Relationship of the Parties. LESSEE is not in any way or for any purpose a partner or joint venturer with or an agent of LESSOR. LESSEE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

Interpretation. LESSOR and LESSEE hereby agree that this Agreement shall not be construed or interpreted in favor of either Party on the basis of preparation.

Authorization. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

Acknowledgement. The Parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

Kansas Laws to Govern. This Agreement is created in the State of Kansas and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

56. FORCE MAJEURE

Anything contained in this Agreement to the contrary notwithstanding, neither Party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Agreement if non-performance shall be due to any "Act of God" or "Force Majeure" which terms are defined for purposes of this Agreement as strikes, lockouts, civil commotion, riots, material or labor restrictions by any governmental authority, explosions, earthquakes, fire, floods, catastrophic weather events, catastrophic pandemic, acts of the public enemy, wars, acts of terrorism, or insurrections. The occurrence of any Act of God or Force Majeure shall be excused for the period of the delay thus occasioned and the period for performance of any such acts shall be extended for a period equivalent to the period of such delay.

57. QUIET ENJOYMENT

LESSOR agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of LESSEE to be performed in this Agreement, LESSEE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the provisions otherwise set out in this Agreement.

58. HOLD OVER

In the event this Agreement is in hold over, any rights granted after expiration of this Agreement without any written renewal, shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a month-to-month arrangement, which may be terminated within thirty (30) day notice by LESSOR or LESSEE. All Land Rent and Facility Rent during any such hold over period will incur a surcharge of twenty-five (25%) percent unless hold over is due to no fault of the LESSEE.

59. SURRENDER OF POSSESSION AND RESTORATION

- a. LESSEE shall yield and deliver to LESSOR possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with LESSEE's obligations in this Agreement, except for reasonable wear and tear. LESSEE is relieved of financial responsibility for fire or other casualty for which full insurance compensation has been paid as agreed. LESSEE shall, at its expense, deliver the Premises in good order and condition, including:
- 1) cleaning and hauling away all supplies and trash;
 - 2) removing and legally transport and dispose of all fuel storage and dispensing facilities, equipment and systems and auxiliary and ancillary appurtenances thereto;
 - 3) removing by legal means all materials or other substances classified as hazardous;
 - 4) removing all Personal Property;
 - 5) leaving in operating condition all bulbs and ballasts in Exclusive Use areas;
 - 6) replacing all broken glass;
 - 7) structures, roofs, and HVAC in good operating order; and
 - 8) return to LESSOR all keys and security access and ID media to all doors and gates.
- b. LESSEE, at LESSEE's expense, shall remove prior to the termination or expiration of this Agreement all trade fixtures that are not permanently attached to the Premises, non-attached equipment and personal property placed by LESSEE on or about the Premises herein leased, subject to LESSEE's repairing any damage thereto caused by such removal and subject to any valid lien which LESSOR may have on that property for unpaid rents, expenses or fees.
- c. In the event LESSEE does not remove all of its equipment and personal property within thirty (30) calendar days after the termination or expiration of this Agreement, any remaining property shall be considered abandoned and LESSOR may take possession and use for its own purposes, or alternatively dispose of said property without any further responsibility or liability to LESSEE. The net disposal costs of such property shall be the financial obligation of LESSEE.

60. INTENTION OF PARTIES

- a.** This Agreement is intended solely for the benefit of LESSOR and LESSEE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by LESSOR is solely for the benefit of LESSOR and LESSEE.
- b.** Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the Parties hereto. Further, non-parties to this Agreement may not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The Parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the Parties hereto creates a relationship other than the contractual relationship of LESSOR and LESSEE.
- c.** It is agreed between the Parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

61. ENTIRE AGREEMENT AND SURVIVABILITY

- a.** The Parties understand and agree that this instrument contains the entire Agreement between them for the Premises. The Parties hereto further understand and agree that the other Party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either Party against the other and such Party shall not be liable by reason of, the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.
- b.** Any sublease agreement between LESSEE and third parties which conveys access to, rights of tenancy, or rights or privileges to occupy and use the Premises by third parties, shall be null and void as a result of termination, cancellation, or expiration of this Agreement, regardless of sublessee's state of compliance with the terms of its sublease.
- c.** As of the Commencement Date hereof, this Agreement shall cancel and nullify all prior agreements and assignments between the Parties for the Premises located at Wichita Col. James Jabara Airport, 3260 Jabara Road, Wichita, Kansas.

- d. The provisions of Section 10.b REPORTING, Section 16.b FUEL STORAGE AND DISTRIBUTION SYSTEMS, Section 22.h FUTURE ALTERATIONS, 26.a LIENS, 36 ENVIRONMENTAL SITE ASSESSMENT, Section 37 ENVIRONMENTAL COVENANTS, 42.b SUBROGATION, and 43 INDEMNITY shall survive the termination or expiration of this Agreement.

62. AMENDMENT

No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the Parties hereto.

63. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY LESSOR

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement shall be performed by the Director of Airports, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director of Airports, and from time to time, may be withdrawn or modified by notice from LESSOR to LESSEE.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement the day and year first above written.

ATTEST:

**THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS**

By _____
Jamie Buster, City Clerk

By _____
Brandon J. Whipple, President
"LESSOR"

By _____
Jesse R. Romo, Director of Airports

ATTEST:

AIRMS, LLC

By _____
Title _____

By: _____
Martin Sellberg, Manager
"LESSEE"

APPROVED AS TO FORM: _____ Date: _____
Jennifer Magaña,
City Attorney and Director of Law